



# THE HISTORY OF BRITISH INDIA.

BY JAMES MILL, ESQ.

FIFTH EDITION WITH NOTES AND CONTINUATION,

BY HORACE HAYMAN WILSON, M A, F R S

MEMBER OF THE ROYAL ASIATIC SOCIETY, OF THE ASIATIC SOCIETIES OF PARIS, BOSTON AND CALCUTTA,  
AND OF THE ORIENTAL SOCIETY OF GERMANY; OF THE IMPERIAL INSTITUTE OF FRANCE, AND THE  
IMPERIAL ACADEMIES OF VIENNA AND ST. PETERSBURGH; OF THE ROYAL ACADEMIES  
OF BERLIN AND MUNICH ETC., ETC; AND HODEN PROFESSOR OF  
SANSKRIT IN THE UNIVERSITY OF OXFORD

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# HISTORY

or

## BRITISH INDIA.

### BOOK VI

FROM THE ESTABLISHMENT OF THE NEW CONSTITUTION FOR  
THE GOVERNMENT OF INDIA, IN 1784, TO THE TERMINA-  
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#### CHAPTER I

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Mr Pitt's Declaratory Act*

UPON the departure of Mr Hastings from Bengal, Mr Macpherson succeeded, as senior in council, to the power and dignity of Chief Governor of the British establishments in India. Certain peculiarities marked the

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relief from the oppressions under which the Nabob was labouring to procure this wished-for relief, the means to be employed were, if possible, to raise in the breast of the Prime Minister a favourable respect for the Nabob, then to lay before him the distress of the Prince, likewise to show the advantage which would arise to the state, from granting him the proper protection." In describing his first interview with the Minister, the Duke of Grafton, the memorialist said, "I expatiated upon the superior merits of the Nabob, showed that he was the person to whom Britain owed the rise of her power in India, that his attachment and unsullied honour to the English were unparalleled. I then dwelt upon his personal merits, as a statesman and a gentleman, and showed, that though he had assurances of protection, under the sovereign hand, he was treated with indignity, and even tyranny." "Having represented," continues the author, "the Nabob's distress, and the oppressions under which he laboured, in the most cautious manner to his Grace, I availed myself of the disputes which subsisted, or were rather commencing, between his Grace, as First Lord of the Treasury, and the India Directors, to enforce the propriety of supporting the Nabob." Another of the topics which he says he always laboured was, "that the firm support of his Highness was the best restraint which government had upon the usurpations of the servants of a certain Company." The memorialist also desires the Nabob to recollect, whether he was not the inventor of the plea, by which the Nabob claimed to be a party to the treaty of Paris, that is, to rank himself with the princes of Europe, as a member of their general system, and to make the King of France an arbiter between him and the English. Beside the general project of relieving the Nabob from oppression, that is, from the necessity of paying his debts, and of yielding anything from the revenues of the country towards its defence, the memorialist claims the merit of having exerted himself in favour of two other favourite designs of the Nabob, that of usurping the seat of the Subah of the Deccan, and that of disinheriting his elder in favour of his second son. Beside the arguments which the memorialist employed upon the minister, and the publications by which he boasts of having influenced the public mind, he

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BOOK VI. recurred to other instruments of persuasion. He offered presents to the minister but they were rejected and then to the minister's secretary but they were rejected again. His next offer but under the necessary portion of disguise was that of a present to the nation: a sum of seventy lacs, or even more to be given to the minister on loan for the public service at an interest of two per cent.

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1785.

As the memorialists in these transactions appeared distinctly to have lent or sold himself to the Nabob, to act in hostility to the Company it was decided in the Council, by a majority of nine to two, that Mr Macpherson should be dismissed from the service. Four of the members, not satisfied with a silent acquiescence in the reason of the President, add, that "a man of the intriguing disposition which that paper shows Mr Macpherson to be is, we think very unfit to be employed as a servant of the Company more especially as we believe Mr Macpherson has been concerned in the intrigues, which the greater part of the Board must have seen the late Nabob have been carried on at the Nabob's Durbar to the detriment of the Company's service and which may have impeded the execution of

wishes of the leading portion of the Directors, they made an experiment whether a more favourable opinion could not be obtained from another quarter. They consulted the Solicitor-General, Wedderburne, who had sufficient power over technical language to satisfy them completely. He pronounced the dismissal of Mr Macpherson not a dismissal, and by consequence, the clause of the act, which regarded dismissal, had in this case no application. Mr. Macpherson was immediately restored. In announcing, however, this decree to the Governor and Council of Madras, the letter of the Court of Directors has the following words: "But, as his behaviour was disrespectful to the Board, and, in other particulars, very reprehensible, we direct that you give him a severe reprimand, and acquaint him that a like conduct will meet with a severer punishment." From the humiliation, however, of such a reprimand, and such a menace, the Court of Directors, who prescribed them, afforded him effectual protection. Though restored to his rank and emoluments in the service, he was allowed to remain in England, till January, 1781, when he was chosen to fill the high office, vacant by the resignation of Mr Barwell, in the Supreme Council of Bengal. This appointment excited the attention of the Select Committee of the House of Commons, who took it under examination, and deemed it of sufficient importance to make it the subject of their third report. The conduct of Mr Macpherson, who undertook the office of a secret enemy of the Company, and became the willing and mercenary instrument of designs levelled against his country, the conduct of the Court of Directors in shielding such a man from the punishment awarded for his offence, nay distinguishing him, as if he had been a model of excellence, by a most unusual reward, lifting him up from a low rank in the service, and placing him all at once in nearly the highest and most important office which they had to bestow, the Select Committee condemned in language of the greatest severity. The design of the Nabob to exempt himself from all dependence upon the Company, the Committee represented as early formed, systematically pursued, and pregnant with danger. He endeavoured to negotiate a treaty of neutrality with the French, which would have secured that nation at Pondicherry. He



the plea was foreign to the charge, for surely the acts of the Supreme Council, whether excellent or the reverse, during the time in which Mr Macpherson had possessed a seat at the Board, were no proof that nearly twenty years before he had not committed an act, which ought to have excluded him from the service

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As Mr Hastings remained in India, till the passing of Mr Pitt's bill left no longer any doubt of his recall, Mr Macpherson had time to rise to seniority in the Council, and, by virtue of his station, occupied, when left vacant, the Governor-General's chair<sup>1</sup>

<sup>1</sup> Thus far, relates not to Mr Macpherson's administration, which alone is the legitimate subject of the History of India, but to matters of a private and personal nature, which have little or no historical importance. The notice is borrowed, both in language and spirit, from the Third Report of the Select Committee, the whole of which is most unworthily taken up with similar topics. Admitting that Mr Macpherson had, twenty years before, and when he owed no fealty to the Company, advocated the claims of the Nabob of Arcot — admitting that he had, whilst yet young in the Company's employment, memorialised the Nabob on the subject of the services he had rendered him, a fact not substantiated — admitting that he had been precipitately dismissed and informally restored — these were circumstances that could have been swelled into such magnitude, as to have been deemed worthy of special parliamentary investigation, only by secret motives, with which we are imperfectly acquainted, but which we may suspect had their origin in some party virulence, provoked by the share which Mr Macpherson was known to have taken, both in 1769 and 1777, whilst in England, as a writer on the side of the Government. There is no doubt that the Court of Directors and the public, duly appreciated the character of the Report, as it led to no ulterior measures. As, however, the personalities of the Committee have been repeated in the text, it is advisable to offer some corrections of them by a statement of the facts. Mr Macpherson went out to India, nominally, as Parser of the Mansfield Chinaman, commanded by his uncle, Captain Macleod. He was the son of the Rev Dr Macpherson, of Sleat, in the Isle of Skye, and received a classical education, first at Aberdeen, and afterwards at Edinburgh, where he was the favourite pupil of Professor Fergusson, and became the tutor of the sons of the Earl of Warwick. He left England in March, 1767. The ship touched at Madras, and Mr Macpherson, having been introduced to the Nabob of Arcot, speedily acquired so much consideration with him, that he engaged the young man to return to England as his agent, with letters addressed to the Minister. With these he arrived in November, in 1768, and presented his despatches to the Duke of Grafton. Whatever may be the truth of the assertions in the memorial, that bribes were offered to the Minister and his Secretary, it is very certain that nothing in Mr Macpherson's conduct was offensive to either, as it was solely by the Duke's interest, that a writership was obtained for him. Mr Macpherson remained in England till the beginning of 1770. He then sailed to Madras, with an appointment in the service, to which, therefore he was not "admitted by Mr Dupre." In 1774, he was paymaster to the army. In 1776, he was dismissed. We have seen the violence of the disputes which enlisted the whole of the Madras community as partisans, either of the Governor or the Nabob. Mr Macpherson had no doubt been flattered by the notice and confidence of the latter, he felt grateful to him as indirectly the cause of his success in life, and he entertained to the last a strong impression of the validity of the Nabob's pretensions to regal independence and power, and of his being treated with indignity and injustice. His expression of these sentiments was no doubt the real cause of Lord Pigot's animosity, and of his removal from the service. Mr Macpherson returned to England in 1777, and was again the bearer of communications from the Nabob

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BOOK VI    The state of the revenues the affairs of Oude and the  
 (PART I)    proceedings of Sindia, the great Mahratta chief occupied  
 first the attention of the new administration.

1    The state in which Mr Macpherson received the government, he represents as far from happy and prosperous. In a statement, bearing date the 4th of March, 1803. "The public distress," he says "was never so great as in this moment. The season of the heavy collections is over the demands of Maliras and Jemadar are in arrears, and our arrears to the army are upwards of fifty Lacs." To the Court of Directors, when sending an account of his government upon the intimation of his recall he represents himself as having been called upon "to save their Governor-General, at a season of peculiar difficulty when the course of a ruinous war and the repeated lateness of their service had left all their armies in arrears and their presidencies in disorder." The following is the substance of

the Indian Governors indulge, makes it impossible to know very exactly what Mr Macpherson indicated, by the term "relaxed habits" of the service, undoubtedly, however, he meant bad government, since he described them as among the causes of some of the worst effects,—arimies all in arrear, and presidencies all in disorder

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The Governor-General and Council stood pledged to Mr Hastings for the maintenance of his new system for the management of Oude To reduce, however, the drain upon the Nabob's treasury, produced by allowances and gratuities to the Company's servants, a rule was introduced, that every thing of this nature should appear upon the face of his accounts, should be recorded by the Council, and transmitted for the inspection of the Court of Directors A body of troops had been assigned by the Nabob to Mr Hastings, as a body guard, during his residence in Oude, and to these troops had been appointed British officers at the Nabob's expense This, too, was a burden upon the Nabob which the Governor-General deemed it improper any longer to impose The expense, however, of Major Palmer, the private agent of Mr Hastings, left at the seat of the Nabob when the ostensible resident was withdrawn, he was induced, "from motives (he says) of delicacy to the late Governor-General, and his arrangements in the upper provinces," not immediately to remove, though the expense was enormous<sup>1</sup> and the agent employed for no other function, than to transmit to the Presidency the letters of the Vizir, and present those addressed to him by the Governor-General The Futtugui detachment, from the changes which had taken place on the frontiers of Oude, it was also, for the present, deemed unsafe to withdraw But the Governor-General declared his resolution of confining the military burden

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in arrear, the credit of the Company was extremely depressed, and, added to all, the whole system had fallen into such irregularity and confusion, that the real state of affairs could not be ascertained till the conclusion of the year 1785-6' Such is the state in which India was left by the administration of Mr Hastings.—M

Such were the inevitable consequences of the ruinous wars engaged in by the Presidencies of Bombay and Madras That the mischief was not incurable, was the merit of Hastings administration.—W

<sup>1</sup> In all, 112,950*l*, of which 22,800*l* was in salary to Major Palmer alone The expense of the residency, under Mr Bristow, which Mr Hastings had represented as frightfully enormous, amounted to 64,202*l* See Burke's Charges, No 16, sect 89



BOOK VI. strong grounds believed, that they received encouragement  
 CHAP. I. from Sindia to the attempt. That ambitious chief pro-  
 185. ceeded in his plans with so much expedition, that, before  
 the end of March, he was master of Agra; and the fort of  
 Ally Ghur which could not long be defended, remained,  
 in that part of India, the only place of strength, beyond  
 the confines of the Vizir which was not in his power. He  
 afforded protection to Cheyte Sing, and gave him a com-  
 mand in his army. He had already treated the Vizir with  
 so little delicacy that nothing but the prospect of effectual  
 resistance, as Major Palmer and Mr Anderson united in  
 representing, could be expected to restrain him within  
 the bounds of justice.<sup>1</sup> What was more, he compelled the  
 Emperor to declare him Vicegerent to the Mogul empire  
 an authority which superseded that of the Vizir and con-  
 solidated in the hands of the Mahrattas all the legal  
 sovereignty of India. These advantages he failed not to  
 direct immediately against the Company themselves and  
 incited the Mogul to make a demand of the tribute due to  
 him from the English. On the charge however of having  
 connived with the designs of Sindia, Mr Hastings has the  
 following words: "I declare that I entered into no nego-  
 tations with Madajee Sindia for delivering the Mogul into  
 the hands of the Mahrattas but I must have been a mad  
 man indeed, if I had involved the Company in a war with  
 the Mahrattas, because the Mogul, as his last resource  
 had thrown himself under the protection of Madajee  
 Sindia." The question is, whether he did not more  
 surely prepare a war with the Mahrattas, by allowing  
 Sindia to feed his presumption and his power with all the  
 resources and pretensions of the imperial throne.

The power of Sindia over the Mogul family was not  
 complete so long as the eldest son of the Emperor re-  
 mained out of his hands. Towards the end of March a  
 negotiation was opened with him by Sindia, of which the  
 object was his return to Delhi. The conditions offered  
 were extremely favourable. "This convinced me," said  
 Major Palmer "they were in illious; and I earnestly  
 recommended that the Prince should not trust to pro-

<sup>1</sup> Extracts from Papers in N. 7. of H. 1. vol.

<sup>2</sup> *History* August 1. 1764. Northbroth, Highbroth, and Secretary  
 Articles of Charge.

mises, as, without security for their performance, he would expose his dignity, his succession, and even his life, to the greatest hazard' Major Palmer continues, "I consider the interests of the Company, and the Vizir, as deeply involved in the fate of the Prince. Whilst he continues under the protection of the Vizir and the Company, the usurpation of the Mahrattas must be incomplete, but, if he should fall under their power, it will be perpetuated, and the consequences of their being permanently established in the authority of the empire, would be truly alarming to the peace of the Vizir's, and the Company's dominions." The Major added, "It will not only be impracticable to withdraw the Fatty Ghur detachment, in the event of Sindia's obtaining a firm footing in the Dooab, which is his aim, and which he has nearly accomplished, but it will also be necessary for the Vizir to maintain a respectable body of cavalry to act with the Company's infantry for the protection of his dominions. And his Excellency is so seriously alarmed at the growing power of the Mahrattas in his neighbourhood, that I am convinced he will readily adopt any practicable plan for securing himself against the consequences of it"<sup>1</sup>

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The Board of Control, at the head of which was placed Mr Henry Dundas, had not been long in the exercise of its functions, when it manifested pretty clearly the ends which it was calculated to promote

So strong a conviction was impressed upon Englishmen, in general, of the evil resulting from the magnitude of the debts due to British subjects by the Nabob of the Carnatic, of the fraudulent methods by which they had been

<sup>1</sup> Letters from the Agent in Oude, dated Lucknow, 1st April, 1785, Extracts from Papers, ut supra —M

The vicissitudes of the different parties disputing for the last fragments of the Mogul empire, were so sudden and incessant, that they baffled the keenest political foresight. Sindia, after holding the power of prime minister for two years, was expelled from his office by a new combination of the Mogul chiefs. His army was defeated, and he himself obliged to fly to his own dominions. He was succeeded by various nobles, amongst whom was the infamous Gholam Kadir, by whom Shah Alein was deposed and blinded. This outrage brought Sindia again to Delhi, but the consolidated power of the British rendered him less formidable than he had been. The Prince Juwan Bukht, after several vain attempts to engage Nawab Vizir and the British Government to aid him, and after one unsuccessful effort, in 1787, to re establish himself at Delhi by force of arms, returned to Delhi, and died suddenly in 1788. Franklin's Shah Aulum, 159 —W

BOOK VI. contracted and of the mischievous purposes which the  
 CHAP. I. Nabob pursued, by acknowledging debts, where nothing  
 18 had been received, and nothing but a dangerous co-operation was expected in return that, in every one of the schemes which the late reformers had proposed for the government of India, a provision had been included, for an adjustment of those enormous and suspicious contracts. In Mr Dundas's bill it was proposed, that the Governor General and Council "should take into consideration the present state of the affairs of the Nabob of Arcot, and inquire into and ascertain, the origin, nature and amount of his just debts," and take the most speedy and effectual measures for discharging them. A provision to the same effect, and couched very nearly in the self-same words, was contained in Mr Fox's bill and to prevent the recurrence of a like evil in future it was declared unlawful for any servant, civil or military of the Company to be engaged in the borrowing or lending of any money or in any money transaction whatsoever with any protected or other native prince." The clause in Mr Pitt's act was in the following words — Whereas very large sums of money are claimed to be due to British subjects by the Nabob of Arcot, be it enacted, That the Court of Directors shall, as soon as may be take into consideration, the origin and justice of the said demands; and that they shall give such orders to their Presidencies and servants abroad for completing the investigation thereof, as the nature of the case shall require; and for establishing in concert with the Nabob, such fund, for the discharge of those debts which shall appear to be justly due as shall appear consistent with the rights of the Company the security of the creditors, and the honour and dignity of the said Nabob."

The Directors, from the words of this enactment, concluded, as anybody would conclude that this inquiry respecting these alleged debts, was a trust, expressly and exclusively devolved upon them and that an inquiry into "the origin and justice of the said demands" implied (what was absolutely necessary to the end which seemed to be proposed, the separation of the false from the true) that scrutiny should be made into each particular case. They proceeded to the fulfilment of the obligation which this enactment seemed to lay upon them; drew up a set

of instructions for their Presidencies and servants abroad, BOOK VI  
and transmitted them for approbation to the Board of CHAP I  
Control

They were not a little surprised to find the Board of Control take the whole business out of their hands. The Board of Control thought proper to divide the debts of the Nabob into three classes, 1 A class consolidated, as it was called, in the year 1767, constituting what it called the loan of 1767, 2 A class contracted for paying the arrears of certain cavalry discharged in 1777, which it called the cavalry loan, 3 Another class, which it called the consolidated debt of 1777<sup>1</sup>. And it ordered, that all these three classes should be discharged, without any inquiry

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As it was only by degrees that funds for that discharge could arise, and twelve lacs annually were set apart for that purpose, the following order was prescribed — That the debt consolidated in 1767 be made up to the end of the year 1784, with the current interest at ten per cent, the cavalry loan made up<sup>2</sup> to the same period with the current interest at twelve per cent, the debt consolidated in 1777 made up to the same period with the current interest at twelve per cent to November, 1781, and from thence with the current interest at six per cent that the annual twelve lacs should be applied, 1 To the growing interest on the cavalry loan at twelve per cent, 2 To the growing interest on the debt of 1777 at six per cent, 3 Of the remainder, one-half to the payment of the growing interest and liquidation of the principal of the loan of 1767, the other half to the liquidation of the debt which the Nabob, beside his debt to individuals, owed to the Company that when the loan of 1767 should thus be discharged, the twelve lacs should be applied, 1 To the growing interest of the loan of 1777, 2 Of the remainder, one-half to pay the interest and liquidate the principal of the cavalry loan, the other half to the liquidation of the debt to the Company that when the cavalry loan should thus be dis-

<sup>1</sup> This classification seems to have been adopted from a pamphlet entitled "A clear and candid exposition of the origin, progress, and state of the several loans made to Mohammed Ally Khan, from 1760 to 1777"—W

<sup>2</sup> "Made up," means augmented by the addition of interest due

BOOK VI. charged, the twelve lacs should be applied, in the proportion  
 PAR 1. of five lacs to the interest and principal of the loan of 1777—  
 178 seven lacs to the debt due to the Company and lastly  
 when the debt due to the Company should thus be dis-  
 charged, that the whole of the twelve lacs should go to the  
 extinction of the debt of 1777—

The Directors remonstated, but very humbly. "Mr  
 Lords and Gentlemen—It is with extreme concern that  
 we express a difference of opinion with your P. L. If ever  
 able I had, in the early exercise of your controlling power  
 but, in so novel an institution it can scarce be thought ex-  
 traordinary if the exact limitations of our respective func-  
 tion and duties should not at once on either side be  
 precisely and familiarly understood, and therefore confide  
 in your justice and candour for believing that we have no  
 wish to evade or frustrate the salutary purposes of your  
 institution, as we on our part are thoroughly satisfied that  
 you have no wish to encroach on the legal powers of the  
 East India Company; we shall proceed to take on of c

dation of those arrears, of which seven lacs the arrangement<sup>3</sup> you have been pleased to lay down would take away from us more than the half and give it to private creditors, of whose demands there are only about a sixth part which do not stand in a predicament that you declare would not entitle them to any aid or protection from us in the recovery thereof, were it not upon grounds of expediency. Until our debt shall be discharged, we can by no means consent to give up any part of the seven lacs to the private creditors" <sup>1</sup>

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The correspondence upon this subject between the Court of Directors and the Board of Control passed during the months of October and November in the year 1784. The Board of Control persisted in the plan which it had originally adopted. And on the 28th of February, 1785, it was moved by Mr Fox, in the House of Commons, that the directions which had in consequence been transmitted to India, should be laid before the House. A vehement debate ensued, in which Mr Burke delivered that celebrated speech, which he afterwards published, under the title of "Mr Burke's Speech on the Motion made for Papers relative to the Directions for charging the Nabob of Arcot's Private Debts to Europeans on the Revenues of the Carnatic." Mr Dundas defended the Board of Control by showing that, whatever might be the natural and obvious meaning of the words of the legislature commanding inquiry, and committing that inquiry to the Court of Directors, it was yet very possible for the strong party to torture them into a meaning, which enabled the strong party to do what it pleased by asserting that the Directors had sufficient materials in the India House for deciding upon all three classes of debts, though the opinion of the Directors themselves was precisely the reverse by observing, that, if any improper claim under any of the three classes was preferred, it was open to the Nabob, to the Company, and to the other creditors, to object. The only object, which, as far as can be gathered from the report of his speech, he held forth as about to be gained, by superseding that inquiry, which all men, but himself and his majority in parliament, would have con-

<sup>1</sup> Beside the Parliamentary Papers, these documents are found in the Appendix to Burke's speech on the Nabob of Arcot's Debts



country For her, he did not disdain to stoop to the trade of a wholesale upholsterer for this house, to furnish it, not with the faded tapestry figures of antiquated merit, such as decorate, and may reproach, some other houses, but with real solid, living patterns of true modern virtue Paul Benfield made (reckoning himself) no fewer than eight members in the *last* parliament What copious streams of pure blood must he not have transfused into the veins of the *present* ! ”

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But the occasions of Mr Benfield had called him to India “It was, therefore,” continues Mr Burke, “not possible for the minister to consult personally with this great man What then was he to do? Through a sagacity that never failed him in these pursuits, he found out in Mr Benfield’s representative his exact resemblance A specific attraction, by which he gravitates towards all such characters, soon brought our minister into a close connexion with Mr Benfield’s agent and attorney, that is, with the grand contractor (whom I name to honour) Mr Richard Atkinson, a name that will be well remembered as long as the records of this house, as long as the records of the British treasury, as long as the monumental debt of England, shall endure’ This gentleman, Sir, acts as attorney for Mr Paul Benfield Every one who hears me is well acquainted with the sacred friendship and the mutual attachment that subsist between him and the present minister As many members as chose to attend in the first session of this parliament can best tell their own feelings at the scenes which were then acted” After representing this Atkinson, as the man whose will directed in framing the articles of Mr Pitt’s East India Bill, Mr Burke proceeds “But it was necessary to authenticate the coalition between the men of Intrigue in India, and the minister of Intrigue in England, by a studied display of the power of this their connecting link Every trust, every honour, every distinction was to be heaped upon him He was at once made a Director of the India Company, made an Alderman of London, and to be made, if ministry could prevail (and I am sorry to say how near, how very near they were to prevailing), representative of the capital of this kingdom, But to secure his services against all risk, he was brought in for a ministerial





mentioned for Mr Benfield will form a capital of 592,000*l*, at six per cent. interest Benfield has thus received, by the ministerial grant before you, an annuity of 35,520*l* a-year, charged on the public revenue”<sup>1</sup>

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After several other remarks on the proceedings of Benfield, he thus sums up “I have laid before you, Mr Speaker, I think with sufficient clearness, the connexion of ministers with Mr Atkinson at the general election, I have laid open to you the connexion of Atkinson with Benfield, I have shown Benfield’s employment of his wealth in creating a parliamentary interest to procure a ministerial protection, I have set before your eyes his large concern in the debt, his practices to hide that concern from the public eye, and the liberal protection which he has received from the minister If this chain of circumstances do not lead you necessarily to conclude that the minister has paid to the advance of Benfield the services done by Benfield’s connexion to his ambition, I do not know any thing short of the confession of the party that can persuade you of his guilt Clandestine and collusive practice can only be traced by combination and comparison of circumstances To reject such combination and comparison is to reject the only means of detecting fraud, it is, indeed, to give it a patent, and free license, to cheat with impunity I confine myself to the connexion of ministers mediately or immediately with only two persons concerned in this debt How many others, who support their power and greatness within and without doors, are concerned originally, or by transfers of these debts, must be left to general opinion I refer to the Reports of the Select Committee for the proceedings of some of the agents in these affairs, and their attempts, at least, to fur-

<sup>1</sup> Mr Hume applied to the Directors in 1814, for information relative to the money which had been paid by the Company, under this decision of the Board of Control, also for a copy of instructions which the Directors proposed to send out to the Presidency, for separating the true from the fraudulent debts, and which instructions the Board of Control superseded In both instances, the application was unsuccessful, and Mr Hume from the best information he could obtain, places the amount at nearly 5,000,000*l* “These claims,” he says, “for what was called the consolidated debt of 1777, of which the Directors had never heard until 1776, and had never been able to obtain any satisfactory information, amounted, with high interest made up to the end of 1784, to the sum of 54,98,500 pagodas, or 2,199 400*l*, and, agreeably to the orders of the Board of Control, sent out at that and subsequent periods, the total had been paid in 1804, with nearly twenty years’ interest, amounting in the whole to near five millions sterling” Speech, ut supra, p 22



not there to object and the servants of the Company were the creditors themselves

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It was not thus decided, by the parties on whom the power of decision depended, when the commissioners for adjudication on the debts of the Nabob were appointed in 1805. It was not accounted wisdom, then, to approve of all in the lump, and only allow the power of objection. It was thought necessary to inquire, and to perform adjudication, after inquiry, upon each particular case. The consequence is, as above disclosed, that one part in twenty, in a mass of claims exceeding twenty millions sterling, is all that is honest and true.

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In this imputed collusion between the ministry and the creditors of the Nabob, it was not insinuated that the ministers had taken money for the favour which they had shown. Upon this Mr Burke makes a remark, which is of the very highest importance. "I know that the ministers," says he, "will think it little less than acquittal, that they are not charged with having taken to themselves some part of the money of which they have made so liberal a donation to their partisans. If I am to speak my private sentiments, I think, that in a thousand cases for one, it would be far less mischievous to the public (and full as little dishonourable to themselves), to be polluted with direct bribery, than thus to become a standing auxiliary to the oppression, usury, and speculation of multitudes, in order to obtain a corrupt support to their power. It is by bribing, not so often by being bribed, that wicked politicians bring ruin on mankind. Avarice is a rival to the pursuits of many, it finds a multitude of checks and many opposers in every walk of life. But the objects of ambition are for the few and every person who aims at indirect profit, and therefore wants other protection than innocence and law, instead of its rival becomes its instrument, there is a natural allegiance and fealty due to this domineering paramount evil from all the vassal vices, which acknowledge its superiority, and readily militate under its banners, and it is under that discipline alone, that avarice is able to spread to any considerable extent, or to render itself a general public mischief. It is, therefore, no apology for ministers, that they have not been bought by the East India delinquents, that they have

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only formed an alliance with them, for screening each other from justice, according to the exigence of their several necessities. That they have done so is evident and the junction of the power of office in England, with the abuse of authority in the East, has not only prevented even the appearance of redress to the grievances of India, but I wish it may not be found to have dulled, if not extinguished, the honour the candour the generosity the good-nature, which used formerly to characterize the people of England.

In October 1784, the Directors appointed Mr Holland, an old servant, on the Madras establishment, to succeed eventually to the government of Fort St. George, upon the resignation, death or removal of Lord Macartney. The Board of Control disapprove the choice not as wrong in itself, but "open to plausible misrepresentation. The Directors not only persist in their appointment, but proceed so far as to say that the Board are interfering in matters to which their control professedly does not extend. The conduct of the Board of Control is characteristic. If the reasons, say they "which we have adduced do not satisfy the Court of Directors, we have certainly no right to control their opinion." Mr Holland, however is informed, that the moment he arrives in India, he will be re-called. This terminates the dispute and Sir Archibald Campbell, a friend of Mr Dundas, is nominated in his stead,

According to the very force of the term, the operation of control is subsequent, not precedent. Before you can control, there must be something to be controlled. Something to be controlled must be something either done or proposed. The subsequent part of transactions by no means satisfied the new organ of government for the East India, the Board of Control. Without an interval of reserve, the Board took upon itself to originate almost every measure of importance.

Intimately connected with its proceedings relative to the debts of the Nabob of the Carnatic, was the resolution formed by the Board of Control with respect to the revenues. The assignment had been adopted by the government of Madras, and approved by the Court of Directors, upon the maturest experience as the only

means of obtaining either the large balances which were due to the Company, or of preventing that dissipation of the revenue, and impoverishment of the country by misrule, which rendered its resources unavailable to its defence, involved the Company in pecuniary distress, and exposed them continually to dangers of the greatest magnitude

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The same parties, however, whose interests were concerned in the affair of the debts, had an interest, no less decisive, in the restoration to the Nabob of the collection and disbursement of the revenues, from which so many showers of emolument fell upon those who had the vices requisite for standing under them. The same influence which was effectual for the payment of the debts was effectual also for the restoration of the revenues. The Board of Control decreed that the revenues should be restored, for the purpose, the Board declared, of giving to all the powers of India, a strong proof of the national faith.

The order for the restitution of the assignment, and the notification of the appointment of a successor, were received by Lord Macartney at the same time. The appointment of a successor he had solicited. The overthrow of his favourite measure, from a full knowledge of the interests which were united, and at work, he was led to expect. "Well apprized," he said, "of the Nabob's extensive influence, and of the ability, industry, and vigilance of his agents, and observing a concurrence of many other circumstances, I was not without apprehensions, that, before the government of Madras could have timely notice of the train, the assignment might be blown up at home, the sudden shock of which, I knew, must almost instantly overthrow the Company in the Carnatic. I, therefore, employed myself most assiduously, in making preparations, to mitigate the mischief, and by degrees collected and stored up all the money that it was possible to reserve with safety from other services and demands, so that when the explosion burst upon us, I had provided an unexpected mass, of little less than thirteen lacs of rupees, to resist its first violence."<sup>1</sup>

<sup>1</sup> Letter from Lord Macartney to the Committee of Secrecy of the Court of Directors, dated Calcutta, 27th July, 1785. How much Lord Macartney and

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In conformity with his declared determination, not to be accessory to a measure which he regarded as teeming with mischief, or a witness to the triumph of those whose cupidity he had restrained, Lord Macartney chose not to hold any longer the reins of government. But one attempt he thought proper to make which was, to return to England by way of Bengal and endeavour to convey to the Supreme Board so correct a notion of the evils to which the recent instructions from home were likely to give birth, as might induce them to delay the execution of those orders, or at least exert themselves to prevent as far possible their pernicious effects. In less than a week, after receiving the despatches from England, he embarked, and arrived about the middle of June at Calcutta. The Governor-General and Council were too conscious of their own precarious and dependent situation, to risk the appearance of disobedience to an order regarding what they might suppose a favourite scheme of the Board of Control. Lord Macartney therefore, was disappointed in his expectation, of obtaining through them, a delay of the embarrassments which the surrender of the revenues would produce. He had indulged, however another hope. If the resources of the Carnatic were snatched from the necessities of the Madras government, he believed that the want might be supplied by the surplus revenues of Bengal. "I had long before, he says, in a letter to the Secret Committee of Directors, been so much enlivened (and your Honourable House was, no doubt, enlivened also) by the happy prospects

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his Council agreed with Mr Danks, respecting the springs which in all these transactions moved the machinery still further appears from the following words. The Ameer al Omrah and M. Benfield were well known to each other; mutual respects did not appear to attract them to each other; but as seen as the objects of their antipathies were the same, they united at once. In this partnership, Mr Benfield has brought his knowledge of nababdom, his interest in parliament, to the former experience of his successful intrigues upon the spot. Copy of Letter from the Government of Fort St. George to that of Bengal, dated 23th May 1782.

I considered the assignment as the rock of your strength in the Carnatic, and therefore had guarded it with vigilance against the assaults of the Durbar and the resources of Bengal. It had contributed largely to your support through the war and might have secured the stability of your commerce and dominion on the coast. DISEASTED WITH ME! I had long since expressed my hope of not being made witness or an accessory to premature surrender of it; and indeed no man could be less properly qualified on such an occasion than myself, being personally disinterested to the Durbar and from my knowledge of their duplicity disaffection and politics, totally unqualified for any speculation that required the slightest degree of confidence to be reposed in them. Letter to the Secret Committee, 27th July 1782

held out in the late Governor-General's letter to you of the 16th of December, 1783, published in several newspapers, both foreign and domestic, that I flattered myself with hopes of finding such resources in Bengal alone, as might relieve any exigency or distress in the rest of India, resulting from a loss of the assignment, or from other misfortunes, but in the range of my inquiries, no distinct traces were to be discovered of these prognosticated funds I had, it seems, formed a visionary estimate, the reality disappeared like a phantom on the approach of experiment, and I looked here for it in vain. The government declared themselves strangers to Mr Hastings's letter, and indicated not a few symptoms of their own necessities"<sup>1</sup>

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They, accordingly, assured Lord Macartney, "that the exhausted state of the finances of the Bengal government would not admit of any extraordinary and continued aid to Fort St George,"<sup>2</sup> expressing at the same time their desire to contribute what assistance was in their power to relieve the distress, which the loss of the revenues, they acknowledged, must produce<sup>3</sup>

A dangerous illness prolonged the stay of Lord Macartney at Calcutta, and previous to his departure, he received a despatch from the Court of Directors, in which was announced to him his appointment to be Governor-General of Bengal. After his removal from the Government, after the subversion of his favourite plans at Madras, an appointment, almost immediate, and without solicitation, to the highest station in the government of India, is not the clearest proof of systematic plans and correspondent execution. The motives, at the same time, appear to have been more than usually honourable and pure. Though Lord Macartney, from the praises which Mr Fox and his party had bestowed upon him in Parliament, might have been suspected of views in conformity with theirs, though he had no connexion with the existing administration which could render it personally desirable to promote him, though the Board of Control had even entered upon the examination of the differences between

<sup>1</sup> Letter to the Secret Committee, 27th July, 1785

<sup>2</sup> Barrow's Life of Lord Macartney, i. 282

<sup>3</sup> The conduct of Lord Macartney in this important business, is displayed in a series of official documents, entitled 'Papers relating to the affairs of the Carnatic,' vol. ii, printed by order of the House of Commons in 1803



BOOK VI. him and Mr Hastings, with minds unfavourably disposed,  
 CHAP. I. the examination impressed the mind of Mr Dundas with  
 1783. so strong an idea of the merits of that Lord's administration, that he induced Mr Pitt to concur with him in recommending Lord Macartney to the Court of Directors, that is, in appointing him Governor-General of Bengal.

The gratification offered to those powerful passions, the objects of which are wealth and power had not so great an ascendancy over the mind of Lord Macartney as to render him insensible to other considerations. His health required a season of repose, and the salutary influence of his native climate. The state of the government in India was such as to demand reforms, reforms, without which the administration could not indeed be successful but which he was not sure of obtaining power to effect. The members of the Bengal administration had been leagued with Mr Hastings in opposing and undervaluing his government at Madras and peculiar objections applied to any thought of co-operation with the person who was left by Mr Hastings at its head. He resolved, therefore, to decline the appointment at least for a season, till a visit to England should enable him to determine, by conference with ministers and directors, the arrangements which he might have it in his power to effect.

He arrived in England on the 9th of January 1786, and on the 13th had a conference with the chairman, and deputy-chairman, of the Court of Directors. The regulations on which he insisted, as of peculiar necessity for the more successful government of India, were two. The entire dependence of the military on the civil power he represented, as not only recommended by the most obvious

This assumption, which is gratitude, is quite at variance with the language of repeated letters from Lord Macartney to Sir John Macpherson. On the 3rd January 1792, he writes, "Let me now thank you for your kindness in telling me what appears to you arises in my conduct. Yet have acted like a true friend, and I shall ever remember it with gratitude as long as I live." On the 20th, he resumes, "In all the parts of the world I have been in and of the various men I have transacted business with, I must say I never was better pleased with any man than yourself. There is no pleasure equal to the sympathy of friends. The only event that could have disturbed this cordiality the restoration of the assigned territories to the Nabob of Arcot, was the act of the Court of Directors, not of Mr Macpherson, although it had his concurrence. This difference of opinion was scarcely sufficient to have cancelled gratitude which Lord Macartney had professed should exist only with his life. There is no reason to believe that Lord Macartney entertained any peculiar objection to co-operation with his former friend. Case of Sir John Macpherson, &c. — K"

dictates of reason, but conformable to the practice of the English government in all its other dependencies, and even to that of the East India Company, previous to the instructions of 1774, instructions which were framed on the spur of the occasion, and created two independent powers in the same administration Secondly, a too rigid adherence to the rule of seniority in filling the most important departments of the State, or even to that of confiding the choice to the Company's servants, was attended, he affirmed, with the greatest inconveniences, deprived the government of the inestimable use of talents, lessened the motives to meritorious exertion among the servants; and fostered a spirit, most injurious to the government, of independence and disobedience as towards its head With proper regulations in these particulars, a power of deciding against the opinion of the Council, and such changes among the higher servants, as were required by the particular circumstances of the present case, he conceived that he might, but without them he could not, accept of the government of India, with hopes of usefulness to his country, or honour to himself

A minute of this conversation was transmitted by the Chairs to the Board of Control, and on the 20th of February, Lord Macartney met Mr Dundas, and Mr Pitt Even since his arrival, Mr Pitt, in answer to an attack by Mr Fox, upon the inconsistency of appointing that nobleman to the chief station in the Indian government almost at the very moment when his principal measure had been reversed, had been called forth to pronounce a warm panegyric upon Lord Macartney, and to declare that, with the exception of that one arrangement, his conduct in his government had merited all the praise which language could bestow, and pointed him out as a most eligible choice for the still more important trust of Governor-General of Bengal. To the new regulations or reforms, proposed by Lord Macartney, Mr Pitt gave a sort of general approbation, but with considerable latitude, in regard to the mode and time of alteration Lord Macartney remarked, that what he had observed in England had rather increased than diminished, the estimate which he had formed of the support which would be necessary to counteract the opposition, which, both at home and abroad, he was sure to

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BOOK VI. experience; and he pointed in direct terms to what he saw  
 CHAP. I. of the connity of Mr Hastings, the influence which he re-  
 1785. tained among both those who were, and those who had  
 been the servants of the Company as well as the influence  
 which arose from the opinion of the favour borne to him  
 by some of those persons who were high in the adminis-  
 tration. His opinion was, that some distinguished mark  
 of favour which would impose in some degree upon minds  
 that were adversely disposed, and proclaim to all, the power  
 with which he might expect to be supported, was neces-  
 sary to encounter the difficulties with which he would  
 have to contend. He alluded to a British peerage, to  
 which, even on other grounds, he conceived that he was  
 not without a claim.

No further communication was vouchsafed to Lord Macartney and, in three days after this conversation, he learned, that Lord Cornwallis was appointed Governor-General of Bengal. The appointment of Lord Macartney was opposed by several members of the administration, among others the Chancellor Thurlow whose impetuosity gave weight to his opinions. It was also odious to all those among the East India Directors and Proprietors, who were the partisans either of Hastings or Macpherson. "When, therefore," says a letter of Lord Melville, "against such an accumulation of discontent and opposition, Mr Pitt was induced by me to concur in the return of Lord Macartney to India, as Governor-General, it was not unnatural that both of us should have felt hurt, that he did not rather repose his future fortune in our hands, than make it the subject of a *res qua non* preliminary. And I think if Lord Macartney had known us as well then as he did afterwards, he would have felt as we did. These were the private grounds as public ones, the same letter states, that the precedent was disapproved of indicating to the world that a premium was necessary to induce persons of consideration in England to accept the office of Governor-General in India, at the very moment when the resolution was taken of not confining the high situations in India to the servants of the Company.

We have now arrived at the period of another parliamentary proceeding, which excited attention by its pomp,

Letter from Lord Melville, in Barrow's Macartney i. 139.

and by the influence upon the public mind of those whose interests it affected, much more than by any material change which it either produced, or was calculated to produce, upon the state of affairs in India. In a history of those affairs, a very contracted summary of the voluminous records which are left of it, is all for which a place can be usefully found.

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1786.

The parties into which parliament was now divided, the ministerial, headed by Mr Pitt, and that of the opposition, by Mr Fox, had, both, at a preceding period, found it their interest to arraign the government in India. The interest of the party in opposition remained, in this respect, the same as before. That of the ministry was altogether changed. It appeared to those whose interest it still was to arraign the government in India, that the most convenient form the attack could assume was that of an accusation of Mr Hastings. The ministry had many reasons to dislike the scrutiny into which such a measure would lead. But they were too far committed, by the violent censures which they had formerly pronounced, to render it expedient for them to oppose it. Their policy was, to gain credit by an appearance of consent, and to secure their own objects, as far as it might be done, under specious pretences, during the course of the proceedings.

The vehement struggles of the parliamentary parties had prevented them, during the year, 1784, from following up by any correspondent measure the violent censures which had fallen upon the administration of India. The preceding threats of Mr Burke received a more determinate character, when he gave notice on the 20th of June, 1785, "That if no other gentleman would undertake the business, he would, at a future day, make a motion respecting the conduct of a gentleman just returned from India." On the first day of the following session, he was called upon by Major Scott, who had acted in the avowed capacity of the agent of Mr Hastings, to produce his charges, and commit the subject to investigation. On the 18th of February, 1786, he gave commencement to the undertaking, by a motion for a variety of papers, and a debate of great length ensued, more remarkable for the criminations, with which the leaders of the two parties

BOOK VI. appeared desirous of aspersing one another than for any  
 CHAP. I. light which it threw upon the subjects in dispute.

1786.

Mr Burke began his speech, by requiring that the Journals of the House should be opened, and that the 44th and 45th of that series of resolutions, which Mr Dundas had moved, and the House adopted on the 29th of May 1782, should be read "1. That,—for the purpose of conveying entire conviction to the minds of the native princes, that to commence hostilities, without just provocation, against them, and to pursue schemes of conquest and extent of dominion, are measures repugnant to the wish, the honour and the policy of this nation—the parliament of Great Britain should give some signal mark of its displeasure against those,) in whatever degree intrusted with the charge of the East India Company's affairs,) who shall appear wilfully to have adopted, or countenanced, a system, tending to inspire a reasonable distrust of the moderation, justice, and good faith of the British nation —2. That Warren Hastings, Esq Governor-General of Bengal, and William Hornby Esq President of the Council at Bombay having in sundry instances acted in a manner repugnant to the honour and policy of this nation, and thereby brought great calamities on India, and enormous expenses on the East India Company it is the duty of the Directors of the said Company to pursue all legal and effectual means for the removal of the said Governor General and President from their respective offices, and to recall them to Great Britain. After Mr Burke had remarked that the present task would better have become the author of these resolutions than himself, he vented his sarcasms on a seal against Indian delinquency which was put on, or put off, according as convenience suggested; exhibited a short history of the notice which parliament had taken of Indian affairs and, in the next place, adduced the considerations which, at the present moment, appeared to call upon the House to institute penal proceedings. It then remained for him, to present a view of the different courses, which, in such a case, it was competent for that assembly to pursue. In the first place, the House might effect a prosecution by the Attorney-General. But to this mode he had three very strong objections. First, the person who held that office appeared to be unfriendly

to the prosecution, whatever depended upon his exertions was, therefore, an object of despair Secondly, Mr Burke regarded a jury as little qualified to decide upon matters of the description of those which would form the subject of the present judicial inquiry Thirdly, he looked upon the Court of King's Bench as a tribunal radically unfit to be trusted in questions of that large and elevated nature The inveterate habit of looking, as in that court, at minute affairs, and that only in their most contracted relations, produced a narrowness of mind, which was almost invariably at fault, when the extended relations of things or subjects of a comprehensive nature were the objects to be investigated and judged<sup>1</sup> A bill of pains and penalties was a mode of penal inquiry which did not, in his opinion, afford sufficient security for justice and fair dealing towards the party accused The last mode of proceeding, to which the House might have recourse, was that of impeachment, and that was the mode, the adoption of which he intended to recommend He should, however, propose a slight departure from the usual order of the steps Instead of urging the House to vote immediately a bill of impeachment, to which succeeded a Committee by whom the articles were framed, he should move for papers, in the first instance and then draw up the articles with all the advantage in favour of justice, which deliberation and knowledge, in place of precipitation and ignorance, were calculated to yield He concluded by a motion for one of the sets of papers which it was his object to obtain

Mr Dundas thought that the allusions to himself demanded a reply He observed, that, at one time during the speech, he began to regard himself, not Mr Hastings, as the criminal whom the Right Honourable Gentleman meant to impeach that he was obliged, however, to those who had any charge to prefer against him, when they appeared without disguise that he wished to meet his accusers face to face that he had never professed any intention to prosecute the late Governor-General of India that the extermination of the Rohillas, the aggression upon the Mahrattas, and the misapplication of the reve-

<sup>1</sup> "The magnitude of the trial would overwhelm," he said, "the varying multitude of lesser causes, of *meum* and *tuum*, assault and battery, conversion and trover, trespass and burglary," etc.

BOOK VI. nue, were the points on which his condemnation rested  
 CHAP. I. that he did move the resolutions which had been read  
 1786. and entertained now the same sentiments which he then  
 expressed that the resolutions he had moved, went only  
 to the point of recall that though in several particulars  
 he deemed the conduct of Mr Hastings highly culpable,  
 yet, as often as he examined it, which he had done very  
 minutely the possibility of annexing to it a criminal inten-  
 tion eluded his grasp; that the Directors were often the  
 cause of those proceedings to which the appearance of cri-  
 minality was attached that after India was glutted with  
 their patronage, no fewer than thirty-six writers had been  
 sent out, to load with expense the civil establishment, in  
 one year that year of purity when the situation of the  
 present accusers sufficiently indicated the shop, from which  
 the commodity was supplied that subsequently to the  
 period at which he had moved the resolutions in question,  
 Mr Hastings had rendered important services and merited  
 the vote of thanks with which his employers had thought  
 fit to reward him. Mr Dundas concluded, by saying, that  
 he had no objection to the motion, and that, but for the  
 insinuations against himself, he should not have thought  
 it necessary to speak.

The defence, however of Mr. Dundas is not less inconsis-  
 tent than his conduct. His profession of a belief, that  
 he himself was to be the object of the prosecution, was an  
 affectation of wit, which proved not, though Mr Hastings  
 were polluted, that Mr Dundas was pure or that in the  
 accusation of the former it was not highly proper even  
 requisite, to hold up to view what was suspicious in the  
 conduct of the latter Whether he ever had the intention  
 to prosecute Mr Hastings, was known only to himself.  
 But that he had pronounced accusations against Mr  
 Hastings, which were either unjust, or demanded a prose-  
 cution, all the world could judge. When he said that the  
 resolutions which he had moved, and which had immedi-  
 ately been read, implied nothing more than recall, it proved  
 only one of two things; either that he regarded public  
 delinquency in a very favourable light, or that this was  
 one of those bold assertions, in the face of evidence, which  
 men of a certain character are always ready to make. If  
 Warren Hastings had really as was affirmed by Mr. Dun-

das, and voted at his suggestion by the House of Commons, "in sundry instances tarnished the honour, and violated the policy of his country, brought great calamities on India, and enormous expenses to the East India Company," had he merited nothing but recall? Lord Macartney was recalled, Sir John Macpherson was recalled, many others were recalled, against whom no delinquency was alleged. Recall was not considered as a punishment. And was nothing else due to such offences as those which Mr Dundas laid to the charge of Mr Hastings? But either the words of Mr Dundas's resolutions were very ill adapted to express his meaning, or they did imply much more than recall. Of the two resolutions which Mr Burke had required to be read, the *last* recommended the measure of recall to the Court of Directors, whose prerogative it was, the *first* recommended something else, *some signal mark of the displeasure of the Parliament of Great Britain*. What might this be? Surely not recall, which was not within the province of Parliament. Surely not a mere advice to the Directors to recall, which seems to fall wonderfully short of *a signal mark of its displeasure*. But Mr Dundas still retained the very sentiments respecting the conduct of Mr Hastings which he had entertained when he described it as requiring "some signal mark of the displeasure of the British Parliament," yet, as often as he examined that conduct, the possibility of annexing to it a criminal intention eluded his grasp; nay, he regarded Mr Hastings as the proper object of the Company's thanks; that is to say, in the opinion of Mr Dundas, Mr Hastings was, at one and the same moment, the proper object of "some signal mark of the displeasure of the British Parliament," and of a vote of thanks at the East India House. The Court of Directors were the cause of the bad actions of Mr Hastings. Why then did Mr Dundas pronounce those violent censures of Mr Hastings? And why did he profess that he now entertained the same sentiments which he then declared? He thought him culpable, forsooth, but not criminal, though he had described him as having "violated the honour and policy of his country, brought great calamities upon India, and enormous expense on his employers," so tenderly did Mr Dundas think it proper to deal with public offences,

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CHAP. I

1786



BOOK VI. which he himself described as of the deepest dye! But  
 CHAP. I. he could not affix criminal calculation to the misconduct of  
 1783. Mr Hastings. It required much less ingenuity than that  
 of Mr Dundas, to make it appear that there is no such  
 thing as criminal intention in the world. The man who  
 works all day to earn a crown, and the man who robs him  
 of it, as he goes home at night, act, each of them, with  
 the very same intention—that of obtaining a certain por-  
 tion of money. Mr Dundas might have known, that  
 criminal intention is by no means necessary to constitute  
 the highest possible degree of public delinquency. Where  
 is the criminal intention of the sentinel who falls asleep  
 at his post? Where was the criminal intention of Ad-  
 miral Byng, who suffered a capital punishment? The  
 assassin of Henry the Fourth of France was doubtless  
 actuated by the purest and most heroic intentions. Yet  
 who doubts that he was the proper object of penal  
 exaction? Such are the inconsistencies of a speech, which  
 yet appears to have passed as sterling, in the assembly to  
 which it was addressed and such is a sample of the  
 speeches which have had so much influence in the govern-  
 ment of this nation!

The year in which Mr Fox had been minister was  
 accused of overloading the patronage of India; and Mr.  
 Dundas hazarded a curious proposition, to which his ex-  
 perience yielded weight, that the circumstance of who was  
 minister always indicated the *shop* as he called it, from  
 which Indian patronage was retailed.<sup>1</sup> This called up Mr  
 Fox, who began by declaring that he spoke on account  
 solely of the charges which had been levelled against him—

<sup>1</sup> Mr Dundas did not intimate that the circumstance of who was minister, "all eyes indicated the shop for Indian patronage. He indicated it in one specific case only that of the administration of 1783, and why? This should have been stated, if it was worth while to have noticed the subject at all. Hastings had written home in 1783, complaining of the situation he was in, in consequence of so many writers being sent out to him, declaring that he had at that time, 346 young ones, the younger sons of the first families in Great Britain, all gipping for him and scrambling for patronage. Notwithstanding this reconnaissance, thirty-six writers were sent out in 1783. Fox and Burke disclaimed for themselves any hand in these appointments; but it seems to have been understood, on both sides of the House, that the ministry of the time, of which they were members, were not unconcerned in the abuse of patronage. This overloading of the India Service, was at once a source of embarrassment to the government and disappointment to the individuals; and the latter was very likely to have brought upon Hastings much of the opposition which his measures encountered, and much of the animosity which he justly experienced.—W

self Surmise might be answered, he thought, by assertion, and, therefore, he solemnly declared, that he had never been the cause of sending out except one single writer to India, and that during the administration of Lord Shelburne The consistency, however, of the Honourable Gentleman, suggested strongly a few remarks, notwithstanding his boasted readiness to face his opponents The power of facing, God knew, was not to be numbered among his wants, even when driven, as on the present occasion, to the miserable necessity of applauding, in the latter part of his speech, what he condemned in the former His opinion of Mr Hastings remained the same as when he arraigned him, yet he thought him a fit object of thanks He condemned the Rohilla war, the treaty of Poorunder, and the expense of his administration. Gracious heaven! Was that all? Was the shameful plunder of the Mogul Emperor, the shameful plunder of the Raja of Benares, the shameful plunder of the Princesses of Oude, worthy of no moral abhorrence, of no legal visitation? Was the tender language now held by the Honourable Gentleman, respecting the author of those disgraceful transactions, in conformity either with the facts, or his former declarations? Mr Pitt rose in great warmth, to express, he said, some part of the indignation, with which his breast was filled, and which he trusted, no man of generous and honourable feelings could avoid sharing with him Who had accused his Honourable Friend of guilt, in now applauding the man whom he had formerly condemned? Who, but he, who, in the face of Europe, had united councils with the man whom for a series of years he had loaded with the most extravagant epithets of reproach, and threatened with the severest punishment! The height of the colouring which that individual had bestowed upon the supposed inconsistency of his friend, might have led persons unacquainted with his character, to suppose that he possessed a heart really capable of feeling abhorrence at the meanness and baseness of those who shifted their sentiments with their interests As to the charge of inconsistency against his Honourable Friend, was it not very possible for the conduct of any man to merit, at one time, condemnation, at another, applause? Yet it was true, that the practice of the accuser had in-

BOOK VI  
CHAP I  
1786

BOOK VI. structured the world in the merit of looking to persons, not  
 CHAP. I. to principles! He then proceeded to extenuate the crimi-  
 1780. nality of the Rohilla war. And concluded, by ascribing  
 the highest praise to that portion of the administration of  
 Hastings which had succeeded the date of the resolutions  
 of Mr Dundas.

On this speech, what first suggests itself is, that a great proportion of it is employed, not in proving that Mr Dundas had not, but in proving that Mr Fox had, been corruptly inconsistent. In what respect, however did it clear the character of Mr Dundas, to implicate that of the man who accused him? How great soever the baseness of Mr Fox, that of Mr Dundas might equal, and even surpass it. True, indeed, the conduct of a man, at one time bad, might, at another time, be the reverse. But would that be a good law which should exempt crimes from punishment, provided the perpetrators happened afterwards to perform acts of a useful description? A man might thus get securely rich by theft and robbery on the condition of making a beneficent use of the fruits of his crimes. "The former portion of the administration of Mr Hastings was criminal the latter meritorious. It suited the minister's present purpose to say so. But they who study the history will probably find, that of the praise which is due to the administration of Mr Hastings, a greater portion belongs to the part which Mr Pitt condemns, than to that which he applauds to such a degree was either his judgment incorrect, or his language deceitful.

<sup>1</sup> The abstract and criticisms of this debate are partial and unavailing. The 43th Resolution of the Committee imposed upon the Directors of the East India Company The duty of pursuing all legal and effectual means for the removal of Warren Hastings and William Hornby from their respective offices, and their recall to Great Britain. I proposing such resolutions, most certainly Mr Dundas gave no intimation whatever much less pledge, of his intending to propose that parliament should undertake duty thus specially imposed upon the Court. Much less was it incumbent on him, or any member of the government, to suggest further proceedings, when the result of the Court's recourse to legal measures to carry the Resolution of the House of Commons into execution, as the confirmation by those vested with lawful authority the Court of Proprietors, of the individuals whom it had been proposed to remove. Again, supposing that the measures anterior to the resolution of the 26th May 1782, had been proved, as they were not, repugnant to the wish, and the honour and policy of the nation, where was the inconsistency of admitting their exculpation by subsequent merits? The principle laid down by Mr Pitt, is that alone by which the conduct of persons in office can be equitably judged. He held it, he observed, absolutely necessary in point of justice and of right, to examine the whole of the public conduct of any

The production of the papers was not opposed, till a motion was made for those relating to the business of Oude during the latter years of Mr. Hastings's administration To this Mr Pitt objected. He said it would introduce new matter, and make the ground of the accusation wider than necessary He wished to confine the judicial inquiry to the period embraced in the reports of the Committees of 1781 Mr. Dundas stood up for the same doctrine If the object, however, was to do justice between Mr Hastings and the nation, it will be difficult to imagine a reason, why one, rather than another part of his administration should escape inquiry Even the friends, however, of Mr Hastings urged the necessity of obtaining the Oude papers, and, therefore, they were granted

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A motion was made for papers relative to the Mahratta peace It was opposed, as leading to the discovery of secrets On ground like this, it was replied, the minister could never want a screen to any possible delinquency. A motion for the papers relative to the negotiations which Mr Hastings had carried on at Delhi in the last months of his administration, was also made, and urged with great importunity It was opposed on the same grounds, and both were rejected

During the debates on these motions, objections had begun to be started, on the mode of procedure which Mr Burke had embraced To call for papers relative to misconduct, and from the information which these might afford, to shape the charges by the guilt, was not, it was contended, a course which parliament ought to allow The charges ought to be exhibited first, and no evidentiary matter ought to be granted, but such alone as could be shown to bear upon the charge These objections, however, produced not any decisive result, till the 3rd of April, when Mr Burke proposed to call to the bar some of the gentlemen who had been ordered, as witnesses to attend. On this occasion, the crown lawyers opposed in

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servant of the people, to give him due credit for such parts as were meritorious, as well as to censure him for such as were culpable, and for his own part, he should not hesitate for one moment to declare, that however censurable some parts of Mr Hastings' conduct might be made to appear, he must, notwithstanding, consider such as were praiseworthy as entitled to the warmest approbation Nay, as a sufficient ground for reward and thanks, could they be proved to predominate over what was exceptionable"—W

BOOK VI. phalanx. Their speeches were long, but their arguments only two. Not to produce the charges in the first instance, and proof, strictly confined to those charges, was unfair they alleged, to the party accused. To produce the charges first, and no proof but what strictly applied to the charges, was the mode of proceeding in the Courts of Law. Mr Burke, and they who supported him, maintained, that this was an attempt to infringe the order of procedure already adopted by the House which had granted evidence in pursuance of its own plan had formed itself into a Committee for the express purpose of receiving evidence; and had summoned witnesses to be at that moment in attendance. They affirmed, that the mode of proceeding, by collecting evidence in the first instance, and then educing the charges, was favourable to precision and accuracy that the opposition, which it experienced, savoured of a design to restrict evidence and that the grand muster of the crown lawyers for such a purpose was loaded with suspicion. The House, however agreed with the lawyers which is as much as to say that such was the plan of the minister and the accuser was obliged to invert the order of his steps. Some elucidation of the incident is strongly required.

To collect some knowledge of the facts of the supposed delinquency to explore the sources of evidence to seek to throw light upon the subject of the accusation to trace the media of proof from one link to another often the only way in which it can be traced and, when the subject is thus in some degree understood, to put the matter of delinquency into those propositions which are the best adapted to present it truly and effectually to the test of proof, is not, say the lawyers, the way to justice. Before you are allowed to collect one particle of knowledge respecting the facts of the delinquency before you are allowed to explore a single source of evidence, or do any one thing which can throw light upon the subject, you must put the matter of delinquency which you are allowed, as far as the lawyers can prevent you, to know nothing about, into propositions for the reception of proof. And having thus made up the subject, which you know nothing about, into a set of propositions, such as ignorance has enabled you to make them, you are to be restrained from

adducing one particle of evidence to any thing but your first propositions, how much soever you may find, as light breaks in upon you, that there is of the matter of delinquency, which your propositions, made by compulsion under ignorance, do not embrace. And this is the method, found out and prescribed by the lawyers, for elucidating the field of delinquency, and ensuring the detection of crime !

BOOK VI  
CHAPTER I  
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To whom is the most complete and efficient production of evidence unfavourable ? To the guilty individual To whom is it favourable ? To all who are innocent, and to the community at large Evidence, said the lawyers, shall not be produced, till after your charges, because it may be unfavourable to Mr Hastings.

If they meant that partial evidence might operate unequally on the public mind, the answer is immediate why allow it to be partial ? Mr Hastings knew the field of evidence far better than his accusers, and might call for what he required

The lawyers were very merciful It was a cruel thing to an innocent man, to have evidence of guilt exhibited against him, and every man should be presumed innocent, till proved guilty From these premises, there is only one legitimate inference, and that is, that evidence of guilt should never be exhibited against any man

The rule of the lawyers for the making of propositions is truly their own It is, to make them out of nothing All other men, on all occasions, tell us to get knowledge first, and then to make propositions Out of total ignorance, how can any thing the result of knowledge be made ?—No, say the lawyers, make your propositions, while in absolute ignorance, and, by help of that absolute ignorance, show, that even the evidence which you call for is evidence to the point It is sufficiently clear, that when the man who endeavours to throw light upon delinquency is thus compelled to grope his way in the dark, a thousand chances are provided for delinquency to escape

When a rule is established by lawyers, and furiously upheld, a rule pregnant with absurdity, and contrary to the ends of justice, but eminently conducive to the profit and power of lawyers, to what sort of motives does com-

BOOK VI. advantage and that they succeeded on two untenable  
 CHAP. I. grounds first, because the search for evidence was unfavourable to Mr Hastings, which was as much as to say that Mr Hastings was guilty not innocent next, because it was contrary to the practice of the courts of law as if the vices of the courts of law ought not only to be inviolate on their own ground, but never put to shame and disgrace by the contrast of virtues in any other place!

1787

Mr Burke being thus compelled to produce the particulars of his accusation, before he was allowed by aid of evidence to acquaint himself with the matter of it, exhibited nine of his articles of charge on the fourth of April, and twelve more in the course of the following week. I conceive that in this place nothing more is required than to give indication of the principal topics. These were, the Rohilla war the transactions respecting Benares and its Raja the measure by which Corah and Allahabad, and the tribute due for the province of Bengal, were taken from the Mogul; the transactions in Oude respecting the Begums, the English Residents, and other affairs those regarding the Mahratta war and the peace by which it was concluded the measures of internal administration, including the arrangements for the collection of the revenues and the administration of justice, the death of Nunoomar, and treatment of Mohammed Bera Khan; disobedience of the commands, and contempt for the authority of the Directors extravagant expense, for the purpose of creating

For profound elucidation of what he calls Investigatorial Procedure, see Mr Bentham Treatise, entitled Scotch Reform.

If this were true, it would argue Burke capable of atrocious iniquity. I prefer charges without being acquainted with the matter of it, would be a most infamous species of delation. But it is not true. Burke's charges were avowedly framed upon the investigations of the Select Committee, and upon documents already in his possession; and so little were his accusations affected by the decision of the 3d of April, that they were preferred on the following day. Is all that has been previously said upon this subject, to have been forgotten, that in theory at least, the question was not the guilt or innocence of Hastings. He was not supposed to be upon his trial. The proceedings were preliminary and amounted to no more than to determine whether there were reasonable grounds why the House of Commons should become his accusers. Proof of this, as in the Bills passed by Grand Jury did not render it necessary to exhibit evidence; and it was the more necessary to be reserved in calling for it, as whatever might be the professed principles of the proceedings of the House, they could not fail to prejudice the accused. It is argued, indeed, that the evidence was as Italy to clear as to condemn Hastings; but here again it is forgotten, that evidence on one side only was demanded, evidence in support of the accusation. A perusal of the debate will satisfy every impartial mind, that the lawyers were more rational than the rhetoricians.—W

dependants and enriching favourites, and the receipt of presents or bribes. An additional article was afterwards presented, on the 6th of May, which related to the treatment bestowed upon Fyzoolla Khan<sup>1</sup>. I shall not account it necessary to follow the debates, to which the motions upon these several charges gave birth, in the House of Commons, both because they diffused little information on the subject, and because the facts have already been stated with such lights as, it is hoped, may suffice to form a proper judgment upon each.

Not only, on several preliminary questions, did the ministers zealously concur with the advocates of Mr Hastings, but even when the great question of the Rohilla war, and the ruin of a whole people, came under discussion, Mr Hastings had the decisive advantage of their support. Mr Dundas himself, who had so recently enumerated the Rohilla war among the criminal transactions which called forth his condemnation, rose up in its defence,<sup>2</sup> and the House voted, by a majority of 119 to 67, that no impeachable matter was contained in the charge.

It was not without reason, that the friends of Mr Hastings now triumphed in the prospect of victory. Every point had been carried in his favour: the minister had steadily and uniformly lent him the weight of his irresistible power, and the most formidable article in the bill of accusation, had been rejected as void of criminating force.

The motion on the charge respecting the extermination of the Rohillas was made on the first of June. That on

<sup>1</sup> The better understanding of the subject seems to require a more precise detail of the charges than is given in this place, or than can be collected from the detached notices found elsewhere. As a summary recapitulation of them may be useful, it will be given at the end of this chapter.—W

<sup>2</sup> The following are the words of the eighth of the resolutions, which he moved in 1781, "That too strong a confirmation cannot be given to the sentiments and resolutions of the Court of Directors and the Court of Proprietors, *in condemnation* of the Rohilla war.—That the conduct of the President and Select Committee of Bengal appears, in almost every stage of it, to have been biassed by an interested partiality to the Vizir, to transgress their own, as well as the Company's, positive and repeated regulations and orders.—That the extermination of the Rohillas was not necessary, for the recovery of forty lacs of rupees.—And that if it was expedient to make their country a barrier against the Mahrattas, there is reason to believe, that this might have been effected by as easy, and by a less iniquitous, interference of the government of Bengal, which would, at the same time, have preserved the dominion to the *rightful* owners, and exhibited an attentive example of justice, as well as policy, to all India."



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BOOK VI

CHAP. I

1786

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No further progress was made in the prosecution of Mr Hastings during that session of the parliament. But the act of Mr Pitt for the better government of India was already found in need of tinkering. Mr Francis, early in the session had moved for leave to bring in a bill for amending the existing law, agreeably to the ideas which he had often expressed. Upon this, however, the previous question was moved, and carried without a division.

In the course of the year 1786, no fewer than three bills for amending the late act, with regard to the government of India, were introduced by the ministers, and passed. The first<sup>1</sup> had for its principal object to free the Governor-General from a dependence upon the majority of his council, by enabling him to act in opposition to their conclusions, after their opinions, together with the reasons upon which they were founded, had been heard and recorded. This idea had been first brought forward by Lord North, in the propositions which he offered as the foundation of a bill, immediately before the dissolution of his ministry. It appears to have been first suggested by Mr Dundas, and the regulation was insisted upon by Lord Macartney, as indispensable to the existence of a good government in India. It was violently, indeed, opposed by Mr Francis, Mr Burke, and the party who were led by them, in their ideas on Indian subjects. The institution, however, bears upon it considerable marks of wisdom. The Council were converted into a party of assessors to

duct of the Governor-General, in imposing a fine of half a million upon the Raja, for his delay in the payment of a contribution of fifty thousand pounds, was oppressive and unjust, but he specifically limited his censure to the exorbitancy of the fine, and expressly protested against any extension of it to the other parts of the charge. His biographer, Gifford, observes, of the feelings with which his speech was received, that, while one side wished him to exculpate the Governor-General, the other was dissatisfied with the limitation of his censure to a particular point. His conduct, however, was such as justice demanded, and conscience approved. *Life of Pitt* i 184. See also Touraine's *Life of Pitt*, i 215. Where the purport of Mr Pitt's speech is given in the same manner, "the exorbitant amount of the fine was the only unjust part of the transaction." Cheit Sing's rebellion was not to be vindicated by the plea of resistance to exaction, for he knew not that the fine intended to be levied was exorbitant, Hastings's intention to levy such fine never having been announced to him. The fine was never exacted—very probably never would have been. The intention was merely matter of conversation. Hastings was not pledged to its accomplishment, and after all, therefore, even Mr Pitt was led to join in charging as a high crime and misdemeanour—an unfulfilled design—a design which would probably never have been carried into effect—and of which nothing could have been known but from Hastings's own honest avowal of having for a time entertained it.—W

<sup>1</sup> 26 Geo III c 16

BOOK IV the Governor-General, aiding him by their advice, and  
 CHAP. L. checking him by their presence. Individual responsibility  
 1784. and unity of purpose were thus united with multiplicity  
 of ideas, and with the influence, not only of eyes, to which  
 every secret was exposed, but of recorded reasons, in de-  
 fiance of which, as the assessors were honest and wise,  
 every pernicious measure would have to be taken, and by  
 which it would be seen that it might afterwards be tried.

The same bill introduced another innovation, which was,  
 to enable the offices of Governor-General and Commander  
 in-Chief, to be united in the same person. It was un-  
 doubtedly of great importance to render the military  
 strictly dependent upon the civil power and to preclude  
 the unavoidable evils of two conflicting authorities. But  
 very great inconveniences attended the measure of uniting  
 in the same person the superintendence of the civil and  
 military departments. In the first place it raised to the  
 greatest possible degree of concentrated strength the  
 temptations to what the parliament and ministry pre-  
 tended they had the greatest aversion—the multiplication  
 of wars, and pursuit of conquest. In the next place, the  
 sort of talents, habits, and character best adapted for  
 the office of civil governor was not the sort of talents,  
 habits, and character best adapted for the military func-  
 tions: nor were those which were best adapted for the  
 military functions, best adapted for the calm and laborious  
 details of the civil administration. And, to omit all other  
 evils, the whole time and talents of the ablest man were  
 not more than sufficient for the duties of either office. For  
 the same man, therefore, it was impossible, not to neglect  
 the one set of duties, in the same degree in which he paid  
 attention to the other.

This bill was arraigned by those who generally opposed  
 the minister and on the 22nd of March, when, in the  
 language of parliament, it was committed, in other words,  
 considered by the House when the House calls itself a  
 committee, Mr Burke poured forth against it one of his  
 most eloquent harangues. It established a despotical  
 power he said, in India. This, it was pretended, was for  
 giving energy and despatch to the government. But the  
 pretext was false. He desired to know where that arbi-  
 trary government existed, of which dignity energy and

despatch, were the characteristics To what had demo- BOOK VI  
 cracy, in all ages and countries, owed most of its triumphs, CHAP. L  
 but to the openness, the publicity, and strength of its  
 operation"<sup>1</sup> 1787

Mr Dundas called upon his opponents to inform him, whether it was not possible for despotism to exist in the hands of many, as well as in the hands of one and he observed, that if the power of the Governor-General would be increased, so would also his responsibility The answer was just and victorious It is a mere vulgar error, that despotism ceases to be despotism, by merely being shared It is an error, too, of pernicious operation on the British constitution Where men see that the powers of government are shared, they conclude that they are also limited, and already under sufficient restraint Mr Dundas affirmed, and affirmed truly, that the government of India was no more a despotism, when the despotism was lodged in the single hand of the Governor-General, than when shared between the Governor and the Council What he affirmed of increasing the force, by increasing the concentration of responsibility, is likewise so true, that a responsibility, shared, is seldom any responsibility at all So little was there, in Burke's oratory, of wisdom, if he knew no better, of simplicity and honesty, if he did

The second of the East India acts of this year<sup>2</sup> was an artifice It repealed that part of Mr Pitt's original act which made necessary the approbation of the King for the choice of a Governor-General It reserved to the King the power of recall, in which the former was completely included

The third of the acts of the same year<sup>3</sup> had but one object of any importance, and that was, to repeal the part of Mr Pitt's original bill, which almost alone appears to have had any tendency to improve the government to which it referred I mean the disclosure of the amount of

<sup>1</sup> Cobbett's Parl Hist, xxv 1276 In the same speech, Mr Burke said, "What he, from the experience derived from many years' attention, would recommend as a means of recovering India, and reforming all its abuses, was a combination of these three things—a government by law—trial by jury—and publicity in every executive and judicial concern" Ibid Of these three grand instruments of good government, what he meant is not very clear as to any but the last of which the importance is, undoubtedly, great beyond expression

<sup>2</sup> 26 Geo III c. 25

<sup>3</sup> Ibid 57

BOOK VI. moved for the Furruckabad papers, and what he received  
 CHAP. I. under that title, he concluded, were the whole but a  
 1787 motion had been afterwards made, by another member  
 for the Persian correspondence, which brought forth  
 documents of the greatest importance. To another cir-  
 cumstance it befitted the House to advert. The attorney  
 of the East India Company in vindication of whose  
 wrongs the prosecution was carried on, was (it was pretty  
 remarkable) the attorney likewise, of Mr Hastings; and  
 while the House were groping in the dark, and liable to  
 miss what was of most importance, Mr Hastings and his  
 attorney to whom the documents in the India House  
 were known, might, on each occasion, by a fortunate docu-  
 ment, defeat the imperfect evidence before the House, and  
 laugh at the prosecution.

On the charge, that expense had been incurred by Mr  
 Hastings for making dependants, and creating a corrupt  
 influence, brought forward on the 16th of March, Mr Pitt  
 selected three particulars, as those alone which appeared  
 to him, in respect to magnitude, and evidence of crimi-  
 nality to demand the penal proceedings of parliament.  
 These were, the contract for bullocks in 1770; the opium  
 contract in 1780;<sup>1</sup> and the extraordinary emoluments be-  
 stowed on Sir Eyre Coote. In the first there were not  
 only he said, reprehensible circumstances, but strong  
 marks of corruption while the latter transaction involved  
 in it almost every species of criminality; a violation of  
 the faith of the Company a wanton abuse of power  
 against a helpless ally a misapplication of the public pro-  
 perty and disobedience to his superiors, by a disgraceful  
 and wicked evasion.\*

<sup>1</sup> There were several pecuniary transactions with individuals, such as con-  
 tract for supplying the army with bullocks, contract for feeding leghams,  
 an agency for the supply of corn, contract for the Company's opium, which  
 were laid hold of by the accusers of Mr Hastings, as either not having been  
 performed agreeably to the rules and orders of the service or in some way  
 implying corruption on the part of the Governor-General, and thence laid  
 among the subjects of criminal charge. As the indications of criminality in  
 these transactions appeared to me to fall short of proof; and they were  
 matters of that degree of detail, to which the limits of history do not allow it  
 to descend, no account of them is included in the narrative of Mr Hastings's  
 Indian Administration.

The six allowances paid to Sir E. Coote were charged to the Nawab Vizir  
 whilst the General was in India and they were sent on to him after his re-  
 turn to Bengal, and reimbursement for Madras. Hastings admits the fact in his  
 defence. If he doubt submitted to these arrangements to keep Sir E. Coote  
 in good humour. And they were chargeable with indifference to expenditure  
 but not with the criminality imputed by the minister.—W

On the 2nd of April, when the report of the Committee on the articles of charge was brought up, it was proposed by Mr Pitt, that, instead of voting whether the House should proceed to impeachment, a preliminary step should be interposed, and that a committee should be formed to draw up articles of impeachment. His reason was, that on several of the particulars, contained in the articles of charge, he could not vote for the penal proceeding proposed, while he thought that on account of others it was clearly required. A committee might draw up articles of impeachment, which would remove his objections, without frustrating the object which all parties professed to have in view. After some little opposition, this suggestion was adopted. Among the names presented for the Committee was that of Mr Francis. Objection to him was taken, on the score of a supposed enmity to the party accused, and he was rejected by a majority of 96 to 44.

On the 25th of the month, the articles of impeachment were brought up from the Committee by Mr Burke. They were taken into consideration on the 9th of May. The formerly celebrated, then Alderman, Wilkes, was a warm friend of Mr Hastings, and strenuously maintained that the prosecution was unjust. He said, what was the most remarkable thing in the debate, that it was the craving and avaricious policy of this country, which had, for the purpose of getting money to satisfy this inordinate appetite, betrayed Mr Hastings into those of his measures for which a defence was the most difficult to be found. The remark had its foundation in truth, and it goes pretty far in extenuation of some of Mr Hastings's most exceptionable acts. The famous Alderman added, that a zeal for justice, which never recognises any object that takes any thing from ourselves, is a manifest pretence. If Mr Hastings had committed so much injustice, how disgraceful was it to be told, that not a single voice had yet been heard to cry for restitution and compensation to those who had suffered by his acts? The stain to which the reformed patriot thus pointed the finger of scorn, is an instance of that perversion of the moral sentiments to which nations by their selfishness are so commonly driven, and which it is therefore so useful to hold up to perpetual view. Among individuals, a man so corrupt could scarcely

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CHAP. I

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BOOK VI. spoke a language still more precise. "It was the meaning  
 CHAP. I. he affirmed, of the act of 1784, that the Board of Control,  
 1783. if it chose, might apply the whole revenue of India to the  
 purposes of its defence, without leaving to the Company  
 a single rupee."

The use to which the minister was, in this manner about to convert the parliament, the opponents of the bill described as full of alarm. To convert the makers of law into the interpreters of law was, itself, a circumstance in the highest degree suspicious; involved in it the destruction of all certainty of law and by necessary consequence of all legal government. To convert into a judicature the British parliament, in which influence made the will of the minister the governing spring, was merely to erect an all powerful tribunal, by which every iniquitous purpose of the minister might receive its fulfilment. The serpentine path, which the minister had thus opened, was admirably calculated for the introduction of every fraudulent measure, and the accomplishment of every detestable design. He finds an object with a fair complexion; lulls suspicion asleep by liberal professions; frames a law in terms so indefinite as to be capable of stretching to the point in view; watches his opportunity; and, when that arrives, calls upon an obedient parliament, to give his interpretation to their words. By this management, may be gained, with little noise or observation, such acquisitions of power as, if openly and directly pursued, would at least produce a clamour and alarm.

When, however the opponents of the bill contended that the act did not warrant the interpretation which the legislature was now called upon to affix; they assumed a weaker ground. They showed, indeed, that the act of 1784, was so contrived as to afford strong appearances of the restricted meaning from which the minister wished to be relieved. Such appearances as produced general deception at the time;<sup>1</sup> but it was impossible to show that the terms of the act were not so indefinite as to be capable

<sup>1</sup> Mr. Paking said, that when the bill of 1784 was brought in it had not been intended by the promoters that the bill should have power. The Commissioners of Control, as was now contended, they did not have their powers. It may be said, answered by them, that they had their powers. It is true that the bill did not deprive them of all their rights and powers. Part. II. of REV. 67

of an interpretation which involved every power of the Indian government

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It was indeed true, that when a law admits of two interpretations, it is the maxim of courts of law, to adopt that interpretation which is most in favour of the party against whom the law is supposed to operate. In parliament, the certain maxim is, to adopt that interpretation which is most favourable to the minister.

The memory of the minister was well refreshed with descriptions of the dreadful effects which he said would flow from the powers transferred to the minister by the bill of Mr Fox. As the same or still greater powers were transferred to the minister by his own, so they were held in a way more alarming and dangerous. Under the proposed act of Mr Fox, they would have been avowedly held. Under the act of Mr Pitt they were held in secret, and by fraud. Beside the difference, between powers exercised avowedly, and powers exercised under a cover and by fraud, there was one other difference between the bill of Mr Fox and that of Mr Pitt. The bill of Mr Fox transferred the power of the Company to commissioners appointed by parliament. The bill of Mr Pitt transferred them to commissioners appointed by the King. For Mr Pitt to say that commissioners chosen by the parliament were not better than commissioners chosen by the King, was to say that parliament was so completely an instrument of bad government, that it was worse calculated to produce good results, than the mere arbitrary will of a King. All those who asserted that the bill of Mr Pitt was preferable to that of Mr Fox, are convicted of holding, however they may disavow, that remarkable opinion.

The declaratory bill itself professed to leave the commercial powers of the company entire. Here, too, profession was at variance with fact. The commercial funds of the Company were blended with the political. The power of appropriating the one, was the power of appropriating the whole. The military and political stores were purchased in England with the produce of the commercial sales. The Presidencies abroad had the power of drawing upon the domestic treasury to a vast amount. The bill, therefore, went to the confiscation of the whole of the Company's property. It was a bill for taking the trading

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## CHAP. I.

matters of importance and by thus subjecting the communication of powers abroad with those at home to difficulties unknown before (This is the matter of solemn impeachment.)

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## ADDITIONAL CHARGES, 12TH APRIL.

10. That Warren Hastings did grant to the Surgeon-General a contract for three years for defraying every kind of hospital and medicinal expense.

11. That he persuaded the Council to enter into a contract with Archibald Fraser Esq. for the repairs of the pools and tanks of Barwan at a fixed rate for four years.

12. That he granted to Stephen Sullivan, son of Lawrence Sullivan, Chairman of the Court of Directors, a contract for four years for the provision of opium; that in order to pay for the opium so provided, he borrowed large sums at an interest of 8 per cent., at a time when he declared the drug could not be exported with profit, and yet he sent it to China, which was an act of additional criminality, as he knew that exportation of opium into China was prohibited by the Chinese that great loss ensued, and that every part of the transaction was a disobedience of orders and continued breach of trust.

13. That M. R. J. Sullivan, having on false pretences retired from the Madras service entered into that of the Nabob of the Carnatic, and was received by Hastings as the agent of the Nabob, and was protected by him Resident at Arcot. And that when this was revealed by the Court of Directors, he dismissed Mr Sullivan from their service Warren Hastings, in defiance of its orders and authority recommended him to be employed as ambassador at the Court of the Nizam.

14. That notwithstanding the Nizam of Ooliss agreed to stipulations previously made with the British Government, as party to the treaty of peace concluded with Nadajee Shidia, yet immediately afterwards he allowed to make war upon the Nizam, and dispossess him of his territory without any interference on the part of the English Government in behalf of their ally thereby forfeiting the honour and injuring the credit, of the British nation in India.

15. That notwithstanding his own admission of the excessive revenue of the country Warren Hastings enforced settlement of the revenue for 5 years, at a higher rate than had ever been asked before. That he so to, in violation of the hereditary rights of the Zemindars, if any proprietors of the lands in India, let the lands in farm for five years; and in contravention of positive orders of the Court of Directors, that no farms should exceed 11 annual amount of one lac of rupees, and that no native amount of revenue of revenue should hold land in farm, or become security for other farms; he allowed his own Estates to farm land to the extent of thirteen lacs of rupees per annum and that by repeated alterations in the system of revenue, he did harass and afflict the inhabitants, and destroy their private property and all evidence in the good faith, principles, and justice of the British Government.

16. That he was guilty of high offence and misdemeanour in his transactions with the Nabob of Ooliss or in default, pervasiveness, contracted time, malicious accusations, fraudulent concealments, and every kind of fraud, in secret, current and predial of profits of the revenues of that in breach of faith to the Nabob in continuing for establishment under a private agent of his own, (Mr Jos. Palmer) after he had agreed to transfer the agent of the Company.

17. That after long course of public service in which he merits had been repeatedly acknowledged by the Government of Persia M. Asad Khan, Nabob Bahadur of Bengal was arrested by the private orders of Warren Hastings, and brought prisoner to Calcutta, where he was long imprisoned and mercilessly detained without trial. That his authority as guardian of the New Bahadur, and manager of his affairs was transferred to Henry Popham, a member of the Council and most unworthy in order of priority and priority his share of the duties thus assigned to him. That Mr Asad Khan was acquitted of every charge against him and was restored to his office by order of the Court of Directors, Warren Hastings again persecuted him, on the pretext that the Nabob was incompetent to manage his own affairs, and then the Court again insisted upon the restoration of Mohammed Asad Khan to an authority transferred previously by the authority of the British Government.

long resisted their orders, his support of Munny Begum having been secured by corrupt means. That in other matters affecting the Nabob, he also exercised undue and mischievous interference, by which the affairs of the Court of Murshedabad had fallen into extreme disorder and distress

18 That in contradiction to the safe, just, and honourable policy of the Court of Directors, which, whilst it forbade their government engaging in any measure for the extension of the authority of Shah Alem, enjoined that he should be treated with friendship good faith, and respectful attention, Warren Hastings did unite with the Captain General of the Mahratta State, called Madajee Sindia, in designs against the few remaining territories of the Mogul Emperor and that whilst he sent an agent to Delhi, and carried on intrigues with the king and his ministers, tending to involve the Company in renewed hostilities he did all along concur with the Mahrattas in their designs against the said king and his ministers, under the treacherous pretext of supporting the authority of the former against the latter and did contrive and effect the ruin of them all, having in view one only object the aggrandisement of the lately hostile, and always dangerous, power of the Mahrattas, which he pursued by means highly dishonourable to the British character for honour, justice, candour, plain-dealing, moderation, and humanity

19 That although it was highly improper to publish letters or papers in defence of measures under the consideration of the Court of Directors, without their consent, Warren Hastings published a narrative of his transactions at Benares without leave had, in order to preoccupy the minds of their servants, and ensure a factious countenance and support and that upon the communication to him of the resolutions of the Court disapproving of his proceedings, he did write and cause to be printed and published, a certain false, insolent, malicious, and seditious libel, purporting to be a letter from him to the Court, and calculated, as they remark, to bring upon them odium and contempt, and excite a spirit of disobedience to the lawful government of this nation in India, through all ranks of their service

#### ADDITIONAL CHARGES, 28TH APRIL

20 That although W Hastings pronounced the war entered into by the Bombay Government with the Mahrattas, to be unseasonable, impolitic, unjust, and unauthorized, and sent an envoy to conclude peace, yet he afterwards sanctioned the violation of the article upon which its establishment depended, and by concurring in the support given by the Bombay Government to the unjustifiable pretensions of Ragoba, a person universally held in abhorrence in the Mahratta empire, prevented the conclusion of the treaty, and that he was therefore specially and principally answerable for the war that followed, with all the expense, distress, and disgraces which attended it That being finally obliged to conclude peace, Warren Hastings did consent to articles highly disadvantageous to the Company, and dishonourable to the British character, by conceding every object for which the war had been undertaken, and abandoning to the vindictive resentment of the Mahrattas, the princes who had been our allies—such as the Rana of Gohud, the Nabob of Bhopal, and Futty Sing Guicowar That he embarrassed the negotiations by employing different ministers to treat, evincing an eagerness highly detrimental to the interests of the English, and originating not in any sincere desire for tranquillity, but the purpose of engaging the India Company in a new war with Hyder Ally, and making the Mahrattas parties thereto and that upon the conclusion of peace with Tippoo by the Government of Fort St George, ratified by that of Bengal, during the absence of Warren Hastings at Lucknow, he did endeavour, at the interested instigation of the Nabob of Arcot to impose additional articles in favour of the Nabob, to the imminent peril of a renewal of the calamities and dangers of the war

21 That in defiance of the Act of Parliament commanding the obedience of the Governor-General and Council to the orders of the Court of Directors, and in disregard of positive orders from the Court, that the correspondence with the Princes or country powers, although carried on by the Governor-General, should be communicated to the Council, and ultimately to the Court, Warren Hastings in sundry instances concealed from his council the correspondence carried on by him with the princes of India, and withheld from the Court copies of the correspondence, and the proceedings thereon, for

BOOK VI. plained. He alluded to the very opprobrious language  
 CHAR II. with which a great state prisoner had been treated by a  
 ——— hot headed lawyer of former times, and said, "the de-  
 1789 fendant has been loaded with terms of such calumny and  
 reproach, which since the days of Sir Walter Raleigh were  
 never used at the bar of this House." Mr Fox inter-  
 rupted him and said, that, vested with a great trust by the  
 House of Commons, he could not sit and hear such lan-  
 guage applied to an accusation which that House in the  
 prosecution of high crimes, had carried to the bar of the  
 competent court.

able length, the order of proceeding contended for by the lawyers and his proposition was adopted without a division. The business of the Court on the 22nd was opened by the Lord Chancellor, proclaiming, "Gentlemen, I have in charge to inform you, that you are to produce all your evidence, in support of the prosecution, before Mr Hastings is called upon for his defence"

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CHAP II

1788

The historian, who is not bound by the opinion, either of the Judges, or of the prosecutors, is called upon to try if he can discover the decision which is pronounced by reason upon the facts of the case

It will not, surely, admit of dispute, that a question will be decided most correctly, when all the evidence which bears upon it is most fully present to the memory, and every part of it receives its due portion of regard. As little will it admit of dispute, that two things contribute to that just appreciation of evidence, namely, recent delivery, and freedom from the mixture both of other evidence not bearing upon the point, and of other questions distracting the attention. The truth of every affirmation is best seen, when the mind, as exempt as possible from every thought, applies the proof immediately to the point which is in dispute. It confronts the affirmative with the negative evidence, adjusts the balance, and decides. There cannot be a question, that for the purpose of ascertaining the truth, of estimating the evidence correctly, and arriving at a decision conformable to the facts, as they took place, the course recommended by the managers was the proper course. As little can it be doubted, that for the purposes of lawyer-craft, for all the advantages to be gained by the suppression of evidence, by the loss of it from the memory, by throwing the Judges into a state of confusion and perplexity, when the mind becomes passive, and allows itself to be led by the adviser who seems most confident in his own opinion, the course successfully contended for by the lawyers, was infinitely the best. The course recommended by the managers, was most favourable to an innocent defendant, to the man for whose advantage it is that truth should be correctly ascertained. The course successfully contended for by the lawyers was most favourable to a guilty defendant, to the man for whose advantage it is that the truth should not be correctly ascertained.



the small portion of additional labour, and the small portion of additional time, requisite for hearing more than once the same article of evidence, may be counterbalanced by a small advantage afforded to the discovery of truth. Besides, when the Judges, after the lapse of years, came to pronounce a separate judgment upon each of the charges, it was absolutely necessary for them, either to repeat to themselves the evidence as often as repetition was necessary, or so far to decide without evidence.<sup>1</sup>

A protest, on the subject, well worthy of a place in the history of this trial, was entered on the Journal of the Lords

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<sup>1</sup> This reasoning is full of fallacies. The main argument is, that prompt decision ensures perfect recollection of the evidence, but what judge ever trusts to his memory for the appreciation of evidence, unless it be very brief and simple, and applicable to a case which can at once be decided, for what memory can accurately retain many and complicated particulars, asserted by a number of witnesses during a long and desultory examination, continued during many successive days, and often suspended for many days? There was in Hastings' Trial, no such thing as "recent" delivery of the testimony, there was no possibility of preventing its escaping, to a very material extent, from the recollection. No conscientious person could have founded a decision upon it as it was heard. He would have weighed it, and pronounced judgment upon it as it was recorded. But if it is necessary for the ends of justice, and that it is so, no person can question, that evidence should be recorded, the recollection of it becomes a matter of indifference. We are as competent at this time to examine its bearing, and determine the amount of its proof, as the persons who actually listened to its utterance. Again, as to another chief argument—the advantage of examining the proofs of each charge separately in detail—it is evident, from the minutes of the evidence, that such a course would have been most unfavourable to the eliciting of truth. The circumstances of the principal charges were inseparably connected with each other, and to have passed judgment on one, without investigating both, would have excluded the judges from the cognizance of much that was indispensable to a comprehensive view of either. The managers, themselves, admitted this most unequivocally, when they abandoned a number of specific charges, because they were "partly involved in others previously investigated." The charges assailed the whole of the intentions and the acts, and the general character of the administration of Hastings, through a series of years, and it was absolutely necessary to look at them together, to judge of them individually. A different procedure, a piece-meal investigation, would have been open to the objections so justly taken to such a course in the preface, and would have exemplified the apologue of the blind men and the elephant.

As to the arguments of the managers, they, like all the sophistical reasonings of public debaters, were adapted to a particular object, and not founded on general principles. Of this a very remarkable and irrefutable proof is afforded by the conduct of Mr Fox, who on this occasion stood foremost in advocating a decision upon the charges severally. Unfortunately for his consistency, he had not very long before maintained the opposite doctrine. "Mr Secretary Fox perfectly agreed in the method proposed by the learned lord, and advised the Hon. Baronet (Sir Thomas Rumbold) to postpone his defence until he heard every thing that could be alleged against him"—Debates on Charges against Sir T. Rumbold, 29th April, 1782, Parliamentary Hist. xxii. 1816. It may be said that there was no inconsistency in this, Fox wishing in one instance to screen, in the other to convict. This is true—but it is not calculated to inspire us with any respect for arguments that take their colour from personal interests and feelings, not from a love of truth or reverence for justice,—W.





less magnitude, extent and variety, than the present, this House has directed the proceedings to be according to the mode now proposed by the managers on the part of the Commons

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"5th Because, even if no precedent had existed, yet from the new and distinguishing circumstances of the present case, it would have been the duty of this House to adopt the only mode of proceeding, which, founded on simplicity, *can ensure perspicuity, and prevent confusion*

"6th Because we conceive, that the accepting the proposal made by the Managers would have been no less *consonant to good policy than to substantial justice*, since by possessing the *acknowledged right of preferring their articles as so many successive Impeachments*, the Commons have an undoubted *power of compelling this House in future virtually to adopt that mode which they now recommend*, and if they should ever be driven to stand on this extreme right, jealousies must unavoidably ensue between the two Houses, whose harmony is the vital principle of national prosperity, public justice must be delayed, if not defeated, the innocent might be harassed, and the guilty might escape

"7th. Because many of the reasons upon which a different mode of conducting their prosecution has been imposed upon the Commons, as alleged in the debate upon this subject, appear to us of a still more dangerous and alarming tendency than the measure itself, forasmuch as *we cannot hear but with the utmost astonishment and apprehension*, that this Supreme Court of Judicature is to be concluded *by the instituted rules of the practice of inferior Courts*, and that *the law of Parliament*, which we have ever considered as recognised and revered by all who respected and understood the laws and the constitution of this country, *has neither form, authority, nor even existence*, a doctrine which we conceive *to strike directly at the root of all parliamentary proceeding by impeachment*, and to be equally destructive of established rights of the Commons, and of the criminal jurisdiction of the Peers, and consequently to tend to the degradation of both Houses of Parliament, to diminish the vigour of public

BOOK VI. justice, and to subvert the fundamental principles of the  
 CHAP. II. constitution.

1788.

PORTLAND,  
 DEVONSHIRE,  
 BEDFORD,  
 CARDIFF  
 DERRY

[Signed]  
 WESTWORTH FITZWILLIAM,  
 STAMFORD,  
 LOUGHBOROUGH,  
 CRAVEN.

For the 1st, 2nd, and 7th reasons, MANCHESTER.

For the 1st and 2nd reasons only { TOWNSHEND,  
 HARCOURT,  
 LEICESTER."

After withdrawing for a few minutes to deliberate, the managers for the Commons submitted to the decision of of the Lords, and proceeded to the investigation upon the first of the charges that relating to the conduct of the defendant toward the Raja of Benares, Choyto Sing. Mr Fox addressed the Court as accuser and Mr Grey followed him the succeeding day. This was the eighth day of the trial and time was consumed in hearing evidence, with disputes raised about its admission or exclusion, from that till the 13th, when Mr Anstruther summed up, and commented upon the matter adduced. Of the evidence or the observations by which it was attended, both for the accusation and the defence, as it is hoped that the preceding narrative has already communicated a just conception of the facts, a repetition would be attended with little advantage and the incidents by which the course of the proceedings was affected will appear in most parts of the trial, to include nearly the whole of what the further elucidation of this memorable transaction requires.

On the 29th of February which was the eleventh day of the trial, Mr Benn, a witness professing forgetfulness, or speaking indeterminately on a point on which he appeared to the managers to have spoken more determinately when previously examined before the House of Commons, was interrogated as to the tenor of his evidence on that preceding occasion. The barristers, of counsel for the defendant, had cavilled several times before at the questions of the accusers. They now made a regular stand.

Mr Law and Mr Plomer argued, that a party should

not be allowed to put any questions tending to lessen the credit of his own witness. Their reasons were, that such a proceeding was not allowed in the courts of law, that if the party believed his witness unworthy of credit, he acted fraudulently, in proposing to take the benefit of his evidence, if favourable, to destroy his credit, if the reverse, and that such an inquisition is a hardship to the man upon whom it is imposed

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The managers for the Commons contended, that such a question as they had put was conformable to the practice both of the courts of law, and of the high court of parliament, as appeared by the trial of Lord Lovat, by the permission given to put leading questions to a reluctant witness, and the practice in the courts of law of questioning a witness as to any deposition he may have made on the same subject in a court of equity that most of the witnesses, who could be summoned upon this trial were persons whose prejudices, whose interests, whose feelings, were all enlisted on the side of the defendant, and who would not, if they could help it, tell any thing to his prejudice and that hence, in all cases similar to this the privilege for which they contended was essential to justice<sup>1</sup>

It is evident from former reasonings, that the first and principal plea of the lawyers is altogether foreign to the question, and deserves not a moment's regard. A contrary practice was universal in the courts of law. What then? The question of the wise man is, not what *is* done in the courts of law, but what *ought* to be done.

Witnesses would suffer by sustaining the proposed inquisition. But surely inquisition is not a worse thing, performed by one, than performed by another party. Inquisition is performed upon every witness by the cross-examination. But if inquisition is to be performed, what objection is there to giving *truth* the benefit of it? Why confine it to one of the parties?

We now come to that plea of theirs which alone has any obscurity in it. A party ought not to bring a witness, whose testimony is unworthy of trust. To this two

<sup>1</sup> Minutes of the Trial of Warren Hastings, MS. The reader may, however, consult the printed History, *ut supra*, which differs in nothing material from the original document in my hands.

BOOK VI. things are to be given in answer First, he may bring  
 CHAP. II. a witness, not knowing that he is unworthy of trust.  
 ——— Secondly he may bring a witness, knowing that he is very  
 1788. imperfectly worthy of trust, because he has none that is  
 better

If a party brings a witness, expecting that he will speak the truth, but finds that he utters falsehood, he is without resource, unless he is permitted to show that what is uttered is falsehood, or at any rate destitute of some of the requisite securities for truth. Upon these terms, a man need only be admitted a witness, to defeat, when he pleases, the cause of justice. This is to shut up one of the doors to the discovery of truth and whatever in judicature shuts up any of the doors to the discovery of truth, by the same operation opens a door to the entrance of iniquity Let us inquire what danger can arise from the privilege to which the lawyers object. If the testimony is really true, to scrutinize is the way to confirm, not weaken it. If the credibility of the witness is good, the more completely it is explored, the more certainly will its goodness appear Make the most unfavourable supposition that a party brings a witness, expecting mendacity and, finding truth, endeavours to impair his credit. This is a possible case let us see what happens. All that a party can do to weaken the credit of a witness, is to point out facts which show him to be capable of mendacity. The credibility of a witness is either strong or weak. If strong, the attempts of a party who stands in the relation of a summoning party to detract from it, can hardly ever have any other effect than to confirm it, and cast suspicion on his own designs. If weak, he can only show the truth, which ought always to be shown; and if it appears, that he brought a witness, known to be mendacious, whose character he discloses only when he speaks the truth, in this case too he affords presumption against himself. Even when a witness, who has a character for mendacity speaks the truth, it is fit that his character should be made known to the judge. It is not enough that one of the parties happens to know the conformity between the testimony and the facts. The satisfaction of the public is of more importance than that of an individual and for the satisfaction of the public, it is necessary that all the requi-

site securities for the discovery of truth should have been employed

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CHAP II

1781

It very often happens, that the only witness to be had is a mendacious and reluctant witness, a partner, for instance, in the crime. Justice may yet have some chance, if the party whose interest it is that the truth should be discovered is allowed the use of all the most efficient instruments of extraction. But if his witness declares, for example, that he does not recollect, and the party is not allowed to adduce evidence to show that it is impossible he should not recollect, a witness of such a description has a licence put into his hand to defeat the ends of justice. It is thus abundantly evident that the honest suitor has often the greatest possible occasion for the power of discrediting his own witness, and must be defeated of his rights if deprived of it. Let us see what possible evil a dishonest suitor can effect by being possessed of it. He wishes, for example, to prove the existence of a fact which never had existence, and he brings a man whom he expects to swear to it, but who disappoints him. Here it is plain that to discredit his witness does no harm, the false fact remains unproved. Let us suppose that he brings, to disprove an actual fact, a witness who disappoints him. In this case he gains as little by discrediting his witness, the true fact is not in the least by that means disproved. But these two are the only possible sets of cases, to which for a fraudulent purpose evidence can be adduced. It appears then, we may almost say, demonstratively, that the power of discrediting his own witness may very often indeed be of the utmost importance to the honest suitor, can never, or almost never, be of any use to the dishonest one. It is a power, therefore, essential to the ends of justice.<sup>1</sup>

The Lords, however, in conformity with the wishes of the lawyers, and with a grand lawyer at their head, having adjourned to their own chamber for the purpose of deliberation, opened the business, the day on which the court was next convened, by informing the managers for the Commons, that it was not allowed them to put the ques-

<sup>1</sup> For a specimen of just ideas on this, and other parts of the subject of evidence, see an unfinished work, entitled "Rationale of Evidence, by J. Bentham, Esq." For a complete elucidation, the public must wait for that more voluminous production, which he announced as nearly prepared, so long ago as in the first edition of the Letters to Lord Grenville on Scotch Reform.

BOOK VI. might refuse to answer a question, which tended to criminate himself. This is a rule, which if thieves, robbers, and murderers, were, the makers of law one would not be surprised at finding in force and repute. That the persons by whom it was established, wished the discovery of guilt, it is not easy to believe for so far as it operates, the impunity of the criminal is secured.

CHAP. II.  
1789.

On the 30th day of May thirty first of the trial, the evidence for the prosecution on the subject of the Begums was closed and, on the following, Mr Shendan began to present the view of it which he wished to imprint upon the minds of the judges. Four days were occupied in the delivery of the speech and this part of the business was concluded on the 13th of June, when the Lords adjourned to the first Tuesday in the next session of parliament.

Before the time which was destined for re-assembling the parliament, the event occurred of the mental derangement of the King. This delayed the resumption of proceedings till the 21st of April, 1789. On that day the thirty-sixth day of the trial, the article of impeachment relating to the receipt of presents, was opened by Mr Burke. The intermediate articles were omitted, partly as involved in the question respecting the Begums of Oude, and partly for the avoidance of delay of which complaints were now industriously raised and dispersed.

Having stated in his speech those facts, the first information of which was derived from the Raja Nuncomar the manager declared that, if the counsel for the defendant should be so injudicious as to bring forward the conviction of the Raja, for the purpose of destroying the effect of those charges, he would open that scene of blood to their Lordships' view and show that Mr Hastings had murdered Nuncomar by the hands of Sir Elijah Impey. Six days afterwards, that is on the 27th of April, when the manager had spoken for two days, Major Scott presented to the House of Commons a petition from Mr Hastings, complaining that Mr. Burke had adduced against him a variety of accusations extraneous to the charges found by that House; and especially had accused him of having murdered Nuncomar by the hands of Sir Elijah Impey. Upon the subject of this petition several debates ensued. It was first disputed, whether the petition should be

received The managers contending, that the motion was irregular and unprecedented, that if every expression not agreeable to the feelings of the party accused, were improper in a criminal prosecution, it would be necessary for criminal prosecutions to cease, that a practice of petitioning against the accuser would regularly convert him into a species of defendant, and, by creating a diversion, defeat the prosecution of crimes, that if the prosecutor misconduct himself in his function, it is for the tribunal before which he offends to annadvert upon his conduct, that the Commons might undoubtedly change their managers if experience had proved them to be unfit for their office, that if the Commons, however, did not mean to withdraw their trust, it would be inconsistent, by any discrediting procedure, to weaken the hands of those who, contending with an adversary so numerously surrounded, so potently supported, and whose delinquencies, by distance of place, distance of time, complexity of matter, and difficulties of innumerable sorts by which the production of evidence was loaded, were to so extraordinary a degree covered from detection, had need of support, not of debilitation, and who required additional strength to enable them to remove the obstacles which separated the evidence from the facts

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The minister, and with him the ministerial part of the House, observing that the Commons had given to their conductors limited powers, and that, if those conductors exceeded the bounds within which it was intended to confine them, it belonged to the Commons, not the Lords, to impose the due restraint, carried the vote that the petition ought to be received

It was agreed, that the subject of the petition should undergo deliberation on the 30th of the month, and that in the mean time the Lords should be requested, by a message, to suspend proceedings on the trial.

On the 30th, instead of proceeding to appointed deliberation, the House, on a suggestion of the Chancellor of the Exchequer, anxious, he said, to preserve the regularity of the proceedings of the House, communicated to the member whose conduct was charged (though everybody had seen him present at every thing which had passed), a formal notice, that a petition had been received, and that the House would take it into consideration on a day that



BOOK VI On the 4th of May the Committee reported that a precedent exactly in point was not to be found. A question  
 CHAP. II. then was raised, whether the examination of the short  
 1789. hand writer should extend to the whole of the speech, or so much of it only as was the subject of complaint. The managers contended for the whole. Mr Pitt spared not upon them either sarcasms or imputations. The question, urged to a division, went of course with the minister.

The words being proved, which Mr. Burke had begun with confessing, it was moved, "That no direction, or authority was given by this House, to bring as a charge against Mr. Hastings, or to impute to him, the condemnation and execution of Nuncomar. Mr Pitt described the motion, as a necessary atonement which the House owed to Mr Hastings for charging him with murder; at the same time disclaiming all intention of throwing blame on the managers. Mr Fox had not much objection to the motion, as it implied no censure on Mr Burke, nor restrained him in future from adducing the facts but he threw out insinuations against the minister as having beheld his professions of fairness and impartiality; and contended that it was inconsistent with the honour and justice of the House to leave men to struggle with a duty whom they found unequal to its discharge that in proving a crime, it was essential to the ends of justice to be allowed to adduce every relevant fact that it was no matter whether the fact was innocent or criminal and that in courts of law themselves, it was a rule to admit one crime as evidence to prove another a greater crime as evidence of a less; murder for example, as proof of a fraud.

Mr. Sheridan represented that he had used the same words a year before, when no notice was taken of them that Mr Hastings was familiar with the imputation of causing the death of Nuncomar for in his defence he had noticed it, and repelled it by denial. With regard to the truth of the allegation, he called upon Mr Pitt to rise and say if he dared, that Nuncomar, if he had not accused Mr Hastings, would have died the death to which he was exposed. Nor was this all. Both he and Mr. Fox declared, that if they had occasion in the course of the trial to speak again of the death of Nuncomar they would

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 speak of it in terms exactly the same with those which Mr Burke had employed

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Mr Pitt said, "he disregarded the insinuations against himself, but he and his friends should be watchful over the conduct of the managers, and take care they transgressed not the directions of the House"

Mr Fox replied, "that no tyrant ever behaved in a more barbarous manner over those whom he governed, nor with more treachery and fraud that the privileges of the Commons were never more invaded, or endangered, within this century, nay, he would say within the last, than they had been within these few days"

In consequence of this altercation, the ministerial party proposed to increase the asperity of the motion, by adding, that the words, "he murdered him by the hands of Sir Elijah Impey," ought not to have been spoken Mr Fox, after inveighing against the absurdity of condemning and not changing the managers, proposed the following amendment "Notwithstanding in a former year no notice was taken of the words spoken by another manager to the same effect, and that Mr Hastings in his defence had considered them as a charge, and given it a reply" Upon his intimating very plainly his belief, that the ministerial party, after finding it convenient to vote for the impeachment, were now at work to defeat it of its end, and through the medium of a courtly censure, meanly to convey sentiments which they were afraid or ashamed to avow, Colonel Phipps rose to order, describing the words which had been uttered, as words not fit for that assembly, and which would not be tolerated in any other place This being treated by Mr Francis as an indecent menace, and receiving a severe reply from Mr Fox, strangers, that is the public, as if something were about to occur which it was not good the public should know, were turned out Upon their admission, after an hour's exclusion, Mr Pitt was repeating his former arguments, to which, after Mr Fox had made a reply, the House called impatiently for the question Mr Fox's amendment was negatived without a division,<sup>1</sup> and the original motion with its

There can be no doubt of the propriety of the decision The accusation was of too serious a nature to be thrown out at random, merely to create a prejudice against the accused, in the minds of those who were sitting in

BOOK VI. amendment passed by a majority of 133 to sixty-six.

CHAP. II. This was followed by a motion for a vote of thanks to the  
 1789. managers; but that was treated as premature, and resisted by a vote for the previous question.

The trial was resumed by the Lords on the 5th of May when Mr Burke continued his opening speech on the charge relating to presents. He announced with great dignity the proceedings which had taken place in the House of Commons, and the restrictions which they had imposed upon him with regard to the death of Nunoomar at the same time declaring that he had used the word *murder* only because he could not find a stronger that the opinion of which that word was the expression, was the result of a nine years laborious inquiry and that it would be torn from him only with his life. On the 7th, which was the next day of the trial, he concluded his speech. It was left to the managers either to produce evidence on that part of the charge which Mr Burke had opened, or to go on to that, the opening of which was reserved to another speaker and the first was the mode which they preferred.

On this article of the impeachment, it will be necessary rather more than on the former articles, to enter into the particulars of the evidence first, because, in the history of the government and people, it was fit to confine the narrative to events of which the consequences were important to the government and people, instead of complicating it with questions which had little reference beyond the character of an individual and, secondly because at this stage, a variety of questions, on the admission or exclusion of evidence, arose questions, the operation of which extended far beyond the limits of any single inquiry and of which, without a knowledge of the circumstances, a due conception cannot be obtained.

The question, whether the defendant had or had not

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judgment upon him for charges of very inferior criminality. If the death of Nunoomar was in any way imputable to Hastings, it should have been made matter of positive accusation. It was wholly unwarrantable to denounce him as guilty of murder merely as collateral proof of his being culpable of corruption. If it was impossible to substantiate the charge as Burke well knew that it was, it was most unfair to Hastings to prefer it in so indirect manner as should leave him no opportunity of disproving it. With regard to the accusation itself, see former remarks, vol. ii, p. 614, note.—W

received presents corruptly, was divided into two parts BOOK VI  
 The first related to the presents, alleged to have been CHAP II  
 received previously to the arrival of Clavering, Monson, 

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 and Francis, the receipt of which Mr Hastings had not  
 voluntarily disclosed, the second related to the presents  
 which he had received when Clavering and Monson were  
 dead, one just before, the rest after the departure of Mr  
 Francis for Europe, presents which, after a time, he con-  
 fessed that he had received, and which he said he received  
 not for his own use, but that of the Company

The principal object of the managers in the first part of  
 the inquiry was to prove, that the appointment of Munny  
 Begum to the office of Naib Subah was a corrupt appoint-  
 ment, made for the sake of the bribes with which it was  
 attended

The first part of the proof was to show that the choice  
 of Munny Begum was so improper and absurd, that as no  
 good motive could be assigned for it, so the receipt of  
 bribes was the only rational one it was possible to find

First, the duties of the office of Naib Subah, as de-  
 scribed by Mr Hastings himself, were numerous and  
 important, and such as could not be neglected or misper-  
 formed, without the deepest injury, not only to the  
 population of the country, but to the East India Company  
 itself In the long list of those duties, were the adminis-  
 tration of justice and police, of which the Naib Subah was  
 not, like our kings, the mere nominal head The actual  
 performance of a considerable portion of the business of  
 penal judicature (for the civil was mostly attached to the  
 office of Dewan), was reserved to him, and the portion so  
 reserved was the high and governing portion, without  
 which the rest could not at all, or very imperfectly, go on  
 The same was the case with the police, of which he was  
 the principal organ The conduct of all negotiations, and  
 execution of treaties, that is, the charge of all the external  
 relations of the state, though, really, as the agent of the  
 Company, was ministerially vested in him. Nor was the  
 administration of all that related to the person and family  
 of the Nabob, who, though in a dependent condition,  
 still maintained the appearance of sovereignty, a matter  
 of which the performance was as easy as it might seem to  
 be familiar

BOOK VI. every disbursement was made, and yet nothing was exhibited in these accounts but general statements of so much expended, while it was ascertained that Mr Hastings had given no orders agreeably to the commands of the Directors, and that inaccuracies prevailed in the statements that were given a strong presumption was thereby created against the Governor-General, because he had thus provided a grand channel through which the current of presents might flow into his pockets, without the necessity of an entry sufficient to detect them in any books of account. After the statement of this presumption, the managers proceeded to the exhibition of direct testimony that bribes were received by Mr Hastings, for the appointment both of Munny Begum and her subordinates. They began with the information received from the Raja Nuncomar that Mr Hastings had accepted a present of two lacs and a half from Munny Begum for appointing her Regent during the minority of the Nabob and a present of one lac from himself for appointing his son, the Raja Gourdass, steward under Munny Begum. The documents produced were the Minutes of Consultation of the President and Council at Calcutta. The reading was not interrupted till it came to the examination of the Raja, before the Council, on the subject of the charges which he had preferred. The learned counsel represented that it ought not to be read, First, because it was not upon oath. Secondly because it was taken in the absence of Mr Hastings. Thirdly because it was not before a competent jurisdiction. Fourthly because the Raja was afterwards convicted of a forgery committed before the date of the examination. On the objection as to the want of an oath, it was shown to have been the practice of Mr Hastings to avail himself of the allegation that an oath was not a requisite to the testimony of a noble Hindu, of whose religion it was a breach. Besides, it can, on reflection, be regarded by nobody as adding anything considerable and may perhaps, be with justice, regarded as adding nothing at all to the securities for truth, to compel a man, who otherwise would certainly affirm a lie to the judge, to perform a short religious ceremony beforehand. In the case of the man, who otherwise would not tell a lie to the judge, the oath evidently is of no use whatever. Further

testimony admits of degrees, one testimony has so many of the securities for truth, another has so many less, another fewer still, the value of each is estimated by the judge, and even the lowest is reckoned for what it is worth. So, when the oath is wanting to an article of testimony, it is only one of the securities that is wanting, and the testimony may be worthy of the highest possible credit on other accounts. As to the objection drawn from the absence of Mr Hastings, it was treated as not merely unreasonable, but impudent. Why was Mr Hastings absent? Because he determined not to be present and if a man is thus allowed to fabricate by his own act an objection to evidence, and then to employ it, he is above the law. The objection to the competence of the jurisdiction was founded upon a disallowed assumption, that the Council, after it met, was dissolved by the simple fiat of the President, though the majority, whose vote was binding, determined it was not. As to the conviction of Nuncomar, the managers declared that they were only restrained by the authority of those whom they represented from asserting that it was a conviction brought about for the very purpose to which it was now applied, the suppression of evidence against Mr Hastings. I shall add, that the rule upon which the objection was founded, is pregnant with the same sort of absurdity and injustice with the other rules of exclusion, examples of which we have already beheld. If a man has committed a crime, ought he therefore to be endowed with the privilege of conferring impunity on every crime committed in his presence, provided nobody sees the action but himself? The evidence of the greatest criminal is of so much importance, that pardon is commonly granted to any one of a combination who gives evidence against the rest.

Upon the whole, with regard to this document, it is most obvious to remark, that it is contrary to the nature of things to suppose that evil should have arisen from hearing it read, because every observation which would tend to show how little on the one side, or much on the other, was its value as an article of evidence, it was the business of the parties to present, and this the Lords were surely as competent to determine as the still more important questions which it behoved them to decide. When

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BOOK VI examined the seal, pronounced it to be the seal of Munny  
 CHAP. II. Begum. This person, whose character and rank Mr.  
 1780. Hastings placed very high, had stated in this letter her  
 having given a large sum of money to Mr. Hastings for  
 appointing her regent during the minority of the Nabob.  
 The evidence of this letter the managers proposed to  
 adduce. The counsel for the prisoner objected. The  
 ground of the objection was, that the letter was recorded  
 in those minutes of the consultation of the 13th of  
 March, which the Court had refused to admit. The  
 House sustained the objection, and forbade the letter to  
 be read.<sup>1</sup>

The next part of the proceedings is truly remarkable.  
 "The managers desired that Philip Francis, Esq., might  
 be called in, to prove that a letter from Munny Begum to  
 the Raja Nuncomar charging Mr. Hastings with a receipt  
 of three and a-half lacs of rupees, was delivered in to the  
 Council on the 13th of March, 1775, and that Mr. Hastings  
 knew the Begum had written such letter. The witness  
 was not allowed to speak to the consultation of that day  
 or to the letter. The reason was, because the proceedings  
 existed in writing, the letter existed in writing and that  
 which itself existed in writing was better evidence than  
 parole testimony to its contents. The witness was not  
 allowed to speak, because there existed a writing that was  
 better evidence and that writing which was better evi-  
 dence the Court had determined they would not receive!  
 The witness was not allowed to speak, on the pretext that  
 something else was better evidence, while the Court itself  
 had determined that the said something else was not evi-  
 dence at all!

When the accounts of Munny Begum, in her quality  
 of Regent, were called for by the Board of Council, after  
 the arrival of Clavering, Monson, and Francis, a large sum  
 appeared, of the mode of disposing of which no explana-  
 tion was given. A commission, at the head of which was  
 placed Mr Goring, was sent to Moorahedabad, to inquire  
 Upon this investigation came out the declarations of

<sup>1</sup> The circumstances respecting the proposal to produce this letter, and the  
 decision upon it, appear more distinctly in the Hist. of the Trial of Warren  
 Hastings, Esq. part ii. p. 87 than in the Minutes of Evidence, where there is  
 obscurity and probably an omission.

Munny Begum, that the sum not accounted for had, at the time of vesting her with the Regency, been given to Mr Hastings and his attendants. Certain papers, stating the receipt, by Mr Hastings, of one lac and a-half of rupees, papers transmitted by Mr Goring to the Board at Calcutta, received by them, recorded without any objection on the part of Mr Hastings, and transmitted by him, still without objection, to the Court of Directors, it was proposed, by the managers, to read. The council for Mr. Hastings insisted that these papers were not direct evidence, as wanting the requisite securities of oath and authentication, and not circumstantial evidence, because no act of Mr Hastings, as required by the Court, connected them with himself. The Lords determined that the papers ought not to be read. And yet that there was matter of evidence in papers so delivered, and that there might be, in the demeanour of the person whom they regarded, it is impossible to deny. That the papers did contain the declaration of Munny Begum, was susceptible of the completest proof. That her declaration, not judicially given, and not subject to cross-examination, was of much less value than if it had received these securities, is no less true, but still, as far as it was not invalidated by other circumstances, it was of some value, and ought to have been counted for what it was worth. And if Mr Hastings, instead of taking the course which was natural to an innocent man, took that which a consciousness of guilt would naturally prescribe, this demeanour would be circumstantial evidence against himself. Instead of permitting light to come in from these two sources, light of which the value, whatever it was, would appear, when it was seen and examined, the Lords resolved to shut it out, without permitting it to be seen at all.

The managers next offered to produce, in evidence of the same facts, an original Persian letter, under the hand and seal of the Munny Begum, signed by the Nabob, and transmitted by Mr Goring to the Board. And as an act of demeanour, fulfilling the condition required by the Lords to constitute any document a link in a chain of circumstantial evidence, they stated that Mr Hastings, after Munny Begum was freed from all influence but his own, never attempted to invalidate the testimony she had



BOOK VI. for receiving them. The counsel for the defendant produced his objections. The managers answered. The counsel replied. The Lords withdrew to their chamber to deliberate. They asked the opinion of the twelve judges. The judges required a little time. After an intermission of proceedings from the 17th of June to the 24th, the Lords met in Westminster Hall, and informed the managers, "That the accounts last offered by them in evidence ought not to be read."

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Before any further proceedings commenced, it was proposed by Lord Porchester one of the Peers, that certain questions should be referred to the judges. It was accordingly to form, that this business should be transacted by the Lords in their chamber of parliament. To this they returned. And at six o'clock in the evening, they sent a message to the Commons, that they had adjourned the further proceedings on the trial for six days. When they met on the 30th in Westminster Hall, no communication of what had passed in their chamber of parliament was made to the parties. And the managers for the Commons were desired to proceed.

Upon their adjournment, however, on the 24th, the Lords had spent the day in debate and agreed to proceed with the further consideration of the subject on the 29th. On that day they went into a committee, "To inquire into the usual method of putting questions to the judges, and receiving their answers in judicial proceedings." A great number of precedents was read. There was a long debate. At last it was determined, That the proceedings on the trial of Warren Hastings, Esq had been regular and conformable to precedent in all trials of a similar nature.

It had been agreed at an early period of the trial, that of the documents received in evidence only so much as referred strictly to the point in question should be read; and that they should be printed entire by way of appendix to the minutes. In this way a letter of Mr Goring, reporting the statements made by Munny Begum relative to the money received by Mr Hastings, had been printed. This report the managers now desired might be read. As printed, by order of the peers, to give information on the subject of the trial, it was already in evidence before

them A long contention ensued The Lords adjourned twice to deliberate on two separate points They at last determined, "That no paper ought to be read merely because it is printed in the appendix, and therefore that the letter of Mr Goring, last offered in evidence, ought not to be read"

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The managers offered the letter again, and urged its acceptance, on two other grounds, First, as part of a consultation which had already been read, and applied to the same subject, secondly, as rendered evidence by the demeanour of Mr Hastings, who had requested the Court of Directors to read and consider it The objections of the counsel were made The usual reply and rejoinder were heard. The managers were asked, "If the above were the whole of the grounds upon which they put the admissibility of the papers offered To which they made answer, That they were 'The House adjourned to the chamber of parliament' The next day of the trial the managers were informed, that "the letter ought not to be read."

The managers, after this, proceeded to prove that when Mr Hastings, as soon as he recovered an ascendancy in the Council, re-established Munny Begum in the regency, the pretext upon which he grounded the proceeding, namely, the will of the Nabob, who had a right to make the appointment, was false and impostrous, in as much as the Nabob, according to Mr Hastings himself, according to the Judges of the Supreme Court, and according to the known facts of his situation, had no will, and was nothing but a creature in the hands of Mr. Hastings They also offered proof, that this proceeding was condemned by the Court of Directors, and that it was injurious to the government, and to the interests of the people To the evidence tendered for this purpose, but little opposition was raised And here the case for the managers upon the first part of this article of the impeachment was closed.<sup>1</sup>

<sup>1</sup> See the Minutes of Evidence, ut supra, p 953—1101, with the History of the Trial, ut supra, part ii —M

The greater part of this second year of the trial was occupied with disputes in regard to the evidence, and it is urged in the text that these disputes originated in the technical objections of the lawyers to the evidence tendered by the managers It is clear from a perusal of the proceedings, however, that

BOOK VI. pany's use and there the matter rested till I undertook  
 CHAP. II. my journey to Lucknow when I determined to accept the  
 1790 money for the Company's use. And these were my  
 motives Having made disbursements from my own cash,  
 which I had hitherto omitted to enter into my public  
 accounts, I resolved to reimburse myself, in a mode most  
 suitable to the situation of the Company's affairs, by  
 charging these disbursements in my Durbar accounts of  
 the present year and crediting them by a sum privately  
 received, which was this of Nobkissen's."

A letter was then read, from the Court of Directors to  
 the Governor-General and Council at Fort William, dated  
 16th March, 1784, in which they require an account (none  
 had as yet been given) of the presents which the Governor  
 General had confessed. Although it is not," they say

our intention to express any doubt of the integrity of  
 our Governor-General; on the contrary after having re-  
 ceived the presents, we cannot avoid expressing our appro-  
 bation of his conduct, in bringing them to the credit of  
 the Company yet, we must confess, the statement of  
 these transactions appears to us in many parts so unintel-  
 ligible, that we feel ourselves under the necessity of calling  
 on the Governor-General for an explanation, agreeably to  
 his promise, voluntarily made to us. We therefore desire  
 to be informed—of the different periods when each sum  
 was received—and what were the Governor-General's  
 motives for withholding the several receipts from the  
 knowledge of the Council—or of the Court of Directors  
 —and what were his reasons for taking bonds for part of  
 those sums—and for paying other sums into the treasury  
 as deposits on his own account."

Mr Hastings was at Lucknow when this letter was re-  
 ceived. He returned to Calcutta on the 6th of November  
 1784 and departed for England in the month of Feb-  
 ruary 1785. During all this time no answer was returned,  
 When in England, he was given to understand that an  
 explanation was still required and he addressed a letter  
 to the Chairman, dated Cheltenham, 11th July 1785. He  
 first apologises, for delay by his absence from Calcutta,  
 and the pressure of business at the close of his govern-  
 ment. He can give no further account, he says, of dates  
 than he has given, though possibly Mr Larkins could give

more The necessities of the government, he says, were at that time so great, that "he eagerly seized every allowable means of relief," but partly thought it unnecessary to record these secret aids, partly thought it might be ostentatious, partly that it would excite the jealousy of his colleagues He made the sums be carried directly to the treasury, and allowed them not to pass through his own hands, to avoid the suspicion of receiving presents for his own use Two of the sums were entered as loans One was entered as a deposit, namely, that expended on Camac's detachment, because the transaction did not require concealment, having been already avowed He makes a curious declaration, that though destined for the public service, and never meant for his own use, "it certainly was his original design to conceal the receipt of all the sums, except that one, even from the knowledge of the Court of Directors" This relates to all the sums, except that from the Nabob Vizir With respect to that, he says, "When fortune threw in my way a sum, of a magnitude which could not be concealed, and the peculiar delicacy of my situation, at the time in which I received it, made me more circumspect of appearances, I chose to apprise my employers of it, and to add to the account all the former appropriations of the same kind "

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In this, if something, be it what it may, be alleged, as a motive for concealment from the Council, nothing whatsoever is even hinted at as a motive for concealment from the Court of Directors This, the principal question, was still completely evaded, and left without a shadow of an answer One of the allegations is altogether unintelligible, that it would have excited suspicion had the sums been carried to his own house, but no suspicion when, as his money, not the Company's, it was lodged in their treasury either as a deposit or a loan If the money was represented as his, the question, how he came by it, was the same in either case With respect to these most suspicious transactions, two important points of information were still obstinately withheld, namely, from what parties the sums were obtained, and why the transactions were concealed from those from whom it was a crime in their servants, of the deepest dye, to conceal anything which affected the trust committed to their charge

BOOK VI. On the 18th of July 1785, a week after the date of his  
 CHAP. II. letter from Cheltenham, Mr Hastings wrote to Mr Lar-  
 1790 kins, still in India to send to the Court of Directors, an  
 account of the dates of the sums which he had privately  
 received. The letter of Mr Larkins, sent in compliance  
 with this request of Mr Hastings, was now produced by  
 the managers. In this letter beside the dates, four of the  
 sources of receipt were incidentally mentioned namely  
 Choyte Sing, and the renters of Behar Nuddea, and Di  
 nagapore.

From this, the managers proceeded to a different head  
 of evidence namely the changes which Mr Hastings had  
 introduced in the mode of collecting the revenues. The  
 object was to show that these changes increased the fa-  
 cilities of peculation, and laid open a wide door for the  
 corrupt receipt of money that such facilities had not  
 been neglected; and that money had been corruptly re-  
 ceived. The great points to which the managers attached  
 their inferences of guilt were three the appointment of  
 the Amceens, with inquisitorial powers for the purpose  
 of the inquiry into the taxable means of the country at  
 the termination of the five years settlement in 1777; the  
 abolition of the Provincial Councils and appointment of  
 the Committee of Revenue and the receipt of presents  
 from the farmers of the revenue in Nuddea, Dinagapore,  
 and Behar.

The managers began with the Provincial Councils. It  
 was proved by a variety of documents, that the Provincial  
 Councils had received the strongest approbation of the  
 Court of Directors. It was proved that they had re-  
 peatedly received the strongest testimonies of approbation  
 from Mr Hastings himself. Yet, on the 9th of February  
 1781, Mr Hastings abolished them and formed his Com-  
 mittee of Revenue.

It was next proved, that Gunga Govind Sing was ap-  
 pointed Dewan to this Committee; and that high and  
 important powers were attached to his office.

To prove that the character of Gunga Govind Sing was  
 bad, a consultation of the Council, in 1775, was read. On  
 that occasion he was, for a fraud, dismissed from his office  
 of Naib Dewan to the Provincial Council of Calcutta.  
 Mr Francis and Mr Monson declaring that, from general

information, they held him to be a man of infamous character, the Governor-General asserting that he had many enemies, and not one advocate, but that all this was general calumny, no specific crime being laid to his charge. Lastly, the managers offered evidence to prove that Gunga Govind Sing, at the time of this appointment, was a public defaulter, by a large balance, of which he would render no account.

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They now passed from the abolition of the Provincial Councils to the present from the revenue farmer at Patna. In the sixth article of charge, Mr Hastings was accused of having taken from a native, of the name of Kelleram, as a consideration for letting to him certain lands in Bahar, a sum of money amounting to four lacs of rupees. It was inferred that this was a corrupt appointment, as well from other circumstances as from this, that Kelleram was notoriously a person of infamous character, and, in all other respects, unqualified for the office.

The managers proposed to begin with the proof of this unfitness. The Counsel for the defendant objected, because unfitness was not a charge in the impeachment. After hearing both parties, the Lords adjourned. Finally, they resolved, "That the managers for the Commons be not admitted to give evidence of the unfitness of Kelleram for the appointment of being a renter of certain lands in the province of Bahar, the fact of such unfitness not being charged in the impeachment."

The point is of importance. It is only when conformable to reason, that the authority of lords, or of any one else, is the proper object of respect.

Whether the appointment of a particular man to a particular office was corrupt, or not corrupt, was the question to be tried. If circumstantial evidence is good in any case, it is good in this. But, surely, it will not be denied, that the fitness or unfitness of the person to the office, is one among the circumstances from which the goodness or badness of the motives which led to his appointment may be inferred. Accordingly, the counsel for the defendant did not deny that the unfitness of Kelleram was proper to be made an article of circumstantial evidence. Not denying that it would be just matter of evidence, if given, they insisted that it should not be given.

BOOK VI.  
 CHAP. II.  
 1700

Their objection amounted to this, that to prove one fact of delinquency no other fact importing delinquency shall be given in evidence, unless the evidentiary fact itself is charged as delinquency in the instrument of accusation. Now such is the nature of many crimes, that other crimes are the most common and probable source of circumstantial evidence. At the same time, it may be very inconvenient, or even impossible, to include all these minor crimes in the instrument of accusation appropriated to the principal crime. They may not all be known, till a great part of the evidence has been heard and scrutinised. The tendency of such a rule cannot be mistaken. It adds to the difficulties of proving crimes it furnishes another instrument, and, as far as it operates, a powerful instrument, for giving protection and impunity to guilt. The objection, that a man cannot be prepared to defend himself against an accusation which has not been preferred, is futile because the fact is not adduced as the fact for which the man is to be punished, but a fact to prove another fact. Besides, if on this, or any other incident of the trial, he could show cause for receiving time to adduce evidence, or in any other way to prepare himself, for any fresh matter which might arise on the trial, a good system of judicature would provide the best mode of receiving it.

Mr Burke took the liberty of making remarks. He said the Commons of England had a right to demand that they should not be held to technical niceties. And he complained of the obstruction which this resolution of the Court would create in dragging to light the offences of the accused, or even in ascertaining the measure of the crime. If the managers were to be debarred," he said, from giving evidence of corrupt intentions, and of aggravations arising from circumstances, *not specifically stated in the charges*, it would be impossible for their Lordships to determine the amount of the fine, which ought to be imposed upon the prisoner if he should be convicted; and their Lordships must, in the end, be embarrassed by their own decision."

The managers then gave in evidence, that, in July 1780, Mr Hastings wrote an order to the chief of the Patna Council, to *permit* Kellaram to go to Calcutta that it





BOOK VI. regard to peshcush, or the gratuity offered by a renter  
 CHAP. II. upon the renewing of his lease, had been established in  
 1775 and that a small sum, merely to preserve an old  
 1790. formality was accurately proscribed, and made permanent.  
 The great sum, taken by Mr Hastings from Kellaram, was  
 not, therefore, peshcush. Mr Young who had been six  
 years a member of the Provincial Council of Patna, said  
 that the lease stood in the name of Cullian Sing but  
 Kellaram was considered as a partner. Being asked,  
 Whether if the lands had been let at their full value, it  
 would have been for the interest of Kellaram to give four  
 lacs of rupees as a gratuity upon the bargain, he replied,  
 "I think, in the circumstances in which Kellaram stood, he  
 could not afford it. He was asked, In what circum-  
 stances did he stand?" The opposing lawyers objected  
 upon the old ground, that the unfitness of Kellaram was  
 not matter of charge. True, and not proposed to be made.  
 But it was matter of evidence, and, as such ought to have  
 been received. The managers waved the question.

The same witness proved, that at the time when this  
 bargain was struck between Mr Hastings and Kellaram, a  
 contract had actually been concluded for the whole pro-  
 vince by the Provincial Council, who had let the lands, in  
 the usual proportions, to the Zemindars of the country and  
 other renters. This legal transaction was therefore violated  
 by the bargain subsequently struck between Mr Hastings  
 and Kellaram. Within the knowledge of the witness, the  
 province had never before been all let to one man.

It was given in evidence that Cullian Sing was Dewan of  
 the province that it was the duty of the Dewan to check  
 the collectors, and prevent the oppression of the ryots;  
 that of course this check was annihilated by making the  
 Dewan renter but it was also stated, that Cullian Sing  
 had never in fact, exercised any of the powers of Dewan,  
 being prevented by the Provincial Council as unfit.

The witness was asked, "Whether the withdrawing  
 the Provincial Council, and abolishing the office of  
 Dewan, did not put it in the power of the farmer to  
 commit oppression with greater ease than before?" His  
 answer was, "Doubtless." He was asked What impres-  
 sions the letting of the lands to Kellaram and Cullian Sing  
 made upon the minds of the inhabitants of the country?



BOOK VI. whether it came within his knowledge that more evil, or less  
 CHAP. II. evil, existed under the Committee of Revenue, than under  
 1790. the Provincial Councils, the right of exclusion was urged  
 afresh. Acts of oppression could not be given, because  
 oppression was not charged in the articles. Be it so but  
 corruption was charged, and acts of oppression were offered  
 as proof of it. Nor is there any contempt of rationality so  
 great as to deny that acts of oppression may afford evi-  
 dence, in proof of corruption. To exclude that evidence  
 by rule, is to deprive justice of one of the means of dis-  
 closing guilt. The managers maintained, that oppression  
 was in reality matter of charge by the words, "to the  
 great oppression and injury of the said people. The  
 lawyers contended, that this, like the words, contrary to  
 the peace of our Lord the King, was but an inference of  
 law. The managers insisted that the cases were radically  
 different, because an act of murder felony treason, was, by  
 its nature, and [necessarily] contrary to the King's peace;  
 the appointment of a Board of Revenue was not by neces-  
 sity oppression. The oppression was not matter of in-  
 ference, but matter of proof. The Lords adjourned to de-  
 liberate, and consumed in the chamber of parliament the  
 rest of the day. The managers were at last informed,

That it was not competent for them to put the following  
 question to the witness upon the seventh article of charge,  
 viz, Whether more oppressions did actually exist under  
 the new institution than under the old."

The managers then reverted to the bargain of Mr  
 Hastings with Cullian Sing, and Kellaram. The purport  
 of the questions was to prove that a rumour a prevalent  
 belief, of the receipt, as a gratuity or present, of a sum of  
 four lacs of rupees, by Mr Hastings, existed, previous to  
 the time at which he made confession of it to his em-  
 ployers. Many of the questions of the managers were  
 resisted by the Counsel for the defendant but such ques-  
 tions were put by some of the Peers as elicited proof that  
 the rumour did precede the confession.

By cross-examination it was shown, that the abolition of  
 the Provincial Councils was injurious to the interests of  
 the witness; that Gunga Govind Sing, to whose reputed  
 character he spoke, lived at Calcutta, while he himself re-  
 sided principally at Patna; that one of the individuals

from whom he had heard a bad character of Gunga Govind Sing was his enemy but that his bad character was a subject of common conversation

BOOK VI  
CHAP. II

1790

In the course of this examination it came out, though the Counsel for the defendant objected to it as evidence, that Kellaram at the time of his bargain with Mr Hastings, was a bankrupt and a prisoner

Mr David Anderson was examined, the President of the Committee of Revenue, and a man selected by Mr Hastings for the most important employments It appeared that his office, as President of the Committee, was almost a sinecure, for excepting about three months, he was always absent on other employments He, too, was acquainted with the rumour about the money received from Kellaram, which made him so uneasy about the reputation of Mr Hastings, that he conversed with him upon the subject, and was told that the money had been accounted for He understood, that sums were privately received from persons employed in the revenue, which never were entered in the public accounts He himself was sworn not to receive money privately The Dewan of the Committee of Revenue might extort money unduly from the people, without detection, provided the offence was not very general The question was put, and a most important question it was "Whether, after all, the Committee, with the best intention, and with the best ability, and steadiest application, might not, to a certain degree, be tools in the hands of the Dewan" The question was objected to, and given up

On his cross-examination, he affirmed that Gunga Govind Sing had not a bad character, he thought he had in general a good character To show that three lacs of the money privately received were sent to the Berar army, two questions were put, to which the managers objected, with as little to justify their objections, as those of their opponents, and more to condemn them, because contrary to the principles to which they were calling for obedience on the opposite side

The managers added the following pertinent questions "Whether during the whole of the year 1780, there was any such distress in the Company's affairs as to put them to difficulty in raising three lacs of rupees? I do not be-

BOOK VI. Evidence was next adduced to prove that Mr Hastings  
 CHAP II. had remitted, through the East India Company since his  
 1790. first elevation to the head of the government in Bengal, property in his own name to the amount of 238,757*l*

Mr Shore being examined whether Gunga Govind Sing was a fit person to be the Dewan, or principal executive officer of revenue, declared that, in his opinion, no native ought to have been employed in that situation. To the character of the natives, in general, he ascribed the highest degree of corruption and depravity

Mr Fox summed up the evidence, thus adduced on the sixth and on part of the seventh and fourteenth articles of impeachment, on the 7th and 9th of June, 1790, the sixty-eighth and sixty ninth days of the trial. The Lords then adjourned to their chamber and agreed to postpone the trial to the first Tuesday in the next session of parliament.

Some incidents, which, during these proceedings, took place in the House of Commons, it is requisite briefly to mention. On the 11th of May in conformity with a previous notice, Mr Burke, after a speech in which he criticized severely the petitions of Mr Hastings, who had bewailed the hardships of the trial, and complained of delays, though he himself, he affirmed, was the grand cause of delay and appeared to have contrived the plan of making his escape by procrastination moved two resolutions. First, that the House would authorize the managers to insist upon such alone of the articles as should appear to them most conducive in the present case to the satisfaction of justice. Secondly that the House was bound to persevere till a judgment was obtained upon the articles of principal importance. The minister supported the first of the motions, but the other as unnecessary he thought the manager ought not to press. Mr Fox laid the cause of delay upon the obstructions to the receipt of evidence, particularly the want of publicity in the deliberations upon the questions of evidence in the House of Lords; because every decision, unaccompanied with reasons, was confined to a solitary case and all other cases were left as uncertain

On this head of the proceedings, have been followed the printed Minutes of Evidence, at *supra*, p. (103—120) and the Hist. of the Trial at *supra*, part III.



BOOK VI. and on the 30th, the subject was started by Mr Burke,  
 CHAP. II. who exhibited reasons for proceeding with the trial, but  
 1780. intimated his suspicion that a design was entertained in  
 the House of Lords to make the incident of a new parliament a pretext for abating the impeachment. On the 9th of December, a motion was brought forward, that on that day or night the House should resolve itself into a Committee to take into consideration the state in which the impeachment of Warren Hastings, Esq. was left at the dissolution of the last parliament. In opposition to this motion, it was proposed, that the House should determine a more limited question, whether or not it would go on with the impeachment. Mr Pitt was of opinion, that it was not fit to wave a question respecting an important privilege of the House, when that privilege was called in question. The original motion was therefore carried. On the day appointed for the Committee, the motion that the Speaker do leave the chair was opposed by allegations of the excellence of the conduct of Mr Hastings, and the hardships to which he had been exposed, by the length of the trial, and the asperity of the managers. Mr Pitt said, the question to which these arguments applied was the question whether it was proper in the House to go on with the impeachment. He wished another question to be previously and solemnly decided, whether it had a *right* to go on with it. Mr Burke said, that gentlemen seemed afraid of a difference with the House of Lords. For his part, he did not court—fools only would court, such a contest. But they who feared to assert their rights, would lose their rights. They who gave up their right for fear of having it resisted, would by and by have no right left." The motion was carried after a long debate. On the 22nd, the business was resumed, on the question, whether the trial of Warren Hastings was pending or not. The debate lasted for two days. The minister and by his side Mr Dundas, joined with the managers in maintaining the uninterrupted existence of the trial. Almost all the lawyers in the House, Mr Erskine among them, contended vehemently that the dissolution of parliament abated the impeachment. This brought forth some strictures upon the profession, which formed the most remarkable feature of the debate. Mr Burke said, that "he had attentively





BOOK VI. lose one of its best securities and ministerial respon-  
 CHAP. II. sibility would become merely nominal." In other words,  
 ——— it would have no existence we should have, instead of  
 1791. it, an imposturous pretence. Mr Burke, however and  
 Mr Fox asserted, and no one who understands the facts  
 can honestly dispute, that the mischievous rules of  
 evidence and procedure set up by the lawyers, and sanc-  
 tioned by the Lords, make impeachment effectual, not for  
 the punishment of the guilty but their escape. That the  
 constitution of England is inadequate to the purposes of  
 good government, as no improvement in that respect has  
 since taken place in, therefore, the recorded opinion of  
 three at least of the most eminent men of the last gener-  
 ation. After a long debate, it was finally agreed, that the  
 impeachment was depending and that on the 23rd the  
 House would resume proceedings in Westminster Hall.

The Lords having taken their places, and the usual  
 preliminaries performed, Mr St. John was heard to open  
 the fourth article of the impeachment; that in which  
 was charged the crime of creating influence, or of forming  
 dependants, by the corrupt use of public money.

Under this head of the trial, the material incidents are  
 few

The topic of influence was of a more extensive applica-  
 tion, than the question relating to Mr Hastings, or than  
 all the questions relating to India taken together. On this  
 subject, to which the most important question respecting  
 the actual state of the British constitution immediately  
 belongs, Mr St. John laid down the following doctrines:  
 "That all the checks of the constitution against the  
 abuse of power would be weak and inefficient, if rulers  
 might erect prodigality and corruption into a system for  
 the sake of influence. That public security was founded  
 on public virtue, on morals, and on the love of liberty.  
 That a system which tended to set public virtue to sale,  
 to pluck up morals by the roots, and to extinguish the  
 flame of liberty in the bosoms of men, could not be  
 suffered to escape punishment, without imminent peril to  
 the public weal." Whether Mr Hastings was guilty or  
 not guilty of creating that influence, remained to be  
 proved. That it tends more than almost any other crime

to deprive the people of England of the benefits of good government, it is impossible not to perceive

BOOK VI  
CHAP II

As soon as the opening speech was concluded, Mr Hastings rose. As the length of his address is moderate, and as it affords a specimen of the manner in which Mr Hastings demeaned himself to the Lords, its insertion will be repaid by the instruction which it yields

1791

“ My Lords,

“ I shall take up but a very few minutes of your time, but what I have to say, I hope, will be deemed of sufficient importance to justify me in requesting that you will give me so much attention. A charge of having wasted 584,000*l* is easily made, where no means are allowed for answering it. It is not pleasant for me, from week to week, from month to month, from year to year, to hear myself accused of crimes, many of them of the most atrocious dye, and all represented in the most shocking colours, and to feel that I never shall be allowed to answer them. In my time of life—in the life of a man already approaching very near to its close, four years of which his reputation is to be traduced and branded to the world is too much. I never expect to be allowed to come to my defence, nor to hear your Lordships’ judgment on my trial. I have long been convinced of it, nor has the late resolution of the House of Commons, which I expected to have heard announced to your Lordships here, afforded me the least glimpse of hope, that the termination of my trial is at all the nearer. My Lords, it is now four years complete since I first appeared at your Lordships’ bar, nor is this all, I came to your bar with a mind sore from another inquisition, in another place, which commenced, if I may be allowed to date it from the impression of my mind, on the day I arrived in this capital, on my return to England after thirteen years’ service. On that day was announced the determination of the House of Commons, for arraigning me for the whole of my conduct, I have been now accused for six years, I now approach very near (I do not know whether my recollection fails me) to sixty years of age, and can I waste my life in sitting here from time to time arraigned, not only arraigned, but tortured with invectives of the most virulent kind? I appeal to every man’s feelings, whether I have not borne many things, that many even

BOOK VI. of your Lordships could not have borne, and with a  
 CHAP. II. patience that nothing but my own innocence could have  
 enabled me to show. As the House of Commons have  
 1791. declared their resolution, that for the sake of speedy justice (I think that was the term) they had ordered their managers to close their proceedings on the article which has now been opened to your Lordships, and to abandon the rest, I now see a prospect which I never saw before, but which it is in your Lordships' power alone to realise, of closing this disagreeable situation, in which I have been so long placed: and however I may be charged with the error of imprudence, I am sure I shall not be deemed guilty of disrespect to your Lordships in the request which I make: that request is, that your Lordships will be pleased to grant me that justice which every man, in every country in the world, free or otherwise, has a right to: that where he is accused he may defend himself, and may have the judgment of the court on the accusations that are brought against him. I therefore do pray your Lordships, notwithstanding the time of the year (I feel the weight of that reflection on my mind), but I pray your Lordships to consider not the unimportance of the object before you, but the magnitude of the precedent which every man in this country may bring home to his own feelings, of a criminal trial suspended over his head for ever: for in the history of the jurisprudence of this country I am told (and I have taken some pains to search, and, as far as my search has gone, it has been verified) there never yet was an instance of a criminal trial that lasted four months, except mine, nor even one month, excepting one instance, an instance drawn from a time and situation of this government, which I hope will be prevented from ever happening again. My Lords, the request I have to make to your Lordships is, that you will be pleased to continue the session of this court till the proceedings shall be closed, I shall be heard in my defence, and your Lordships shall have proceeded to judgment. My Lords, it is not an acquittal that I desire; that will rest with your Lordships, and with your own internal conviction, I desire a defence, and I desire a judgment, be that judgment what it will. My Lords, I have bowed, I have humbled myself before this court, and I have been

reproached for it. I am not ashamed to bow before an authority to which I owe submission, and for which I feel respect that excites it as a willing oblation from me. I now again, with all humility, present myself a subject of your justice and humanity. I am not a man of apathy, nor are my powers of endurance equal to the tardy and indefinite operation of parliamentary justice. I feel it as a very cruel lot imposed on me, to be tried by one generation, and, if I live so long, to expect judgment from another, for, my Lords, are all the Lords present before whom I was originally tried? Are not many gone to that place to which we must all go? I am told that there is a difference of more than sixty in the identity of the judges before whom I now stand. My Lords, I pray you to free me from this prosecution, by continuing this trial till its close, and pronouncing a judgment during this session, if your Lordships can do it, I have a petition to that effect in my hand, which, if it is not irregular, I now wish to deliver to your Lordships."

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1791

There was exquisite adaptation, either with or without design, in the conduct of Mr Hastings, to the circumstances in which he was placed. The tone of submission, not to say prostration, which he adopted towards the Court, was admirably suited to the feelings of those of whom it was composed. The pathetic complaints of hardship, of oppression, of delay, of obloquy, began when the tide of popular favour began to be turned successfully against the agents of the prosecution, and they increased in energy and frequency, in proportion as odium towards the managers, and favour towards himself, became the predominant feeling in the upper ranks of the community.

This odium, and this favour, are not the least remarkable among the circumstances which this impeachment holds up to our view. During the trial, what had the managers done to merit the one, what had Mr Hastings done, to merit the other?<sup>1</sup> Convinced, for it would be

<sup>1</sup> There were abundant reasons why the sentiments of the people should have undergone a change. The managers, after long declamatory harangues, which had "harrowed up the souls" of a tender-hearted public, had proved—nothing. It was impossible that the people should not feel some resentment at the fraud thus practised upon their sympathies. Then so many instances of undignified violence had been exhibited by Burke in particular, the prime mover of the whole—both in Parliament and in Westminster Hall, that it was generally felt there was more of personal vindictiveness in his proceedings.

BOOK VI. the torture of his dependence the terror of those evils  
 CHAP. II. which he contemplated in the displeasure of his masters ?  
 1791. It is infamous to speak of presents from a man, in such  
 a situation, as *free gifts*. No robbery is more truly coercion.

Again the allegation that Sir Eyre Coote would have deserted his post as a soldier and abandoned his country in a moment of extreme exigency upon a question of 18,000*l.* per annum stamps with infamy either the character of that General, if it was true, and it is not without appearances to support it or that of Mr. Hastings, if it was false.

On the rest of the transactions, charged in this article as acts of delinquency the explanations of Mr Hastings left so few points for suspicion remaining, that, as the facts in themselves are not material to the history the description of them would be of little advantage.

On the 30th of May 1791, and the seventy-third day of the trial, Sir James St. Clair Erskine was heard to sum up the evidence upon the fourth article of impeachment.

Then the managers for the Commons informed the House, that, saying to themselves all their undoubted rights and privileges, the Commons were content to rest their charge here." Mr Hastings made an humble address to the court, and alluding to his last petition which yet lay upon the table unconsidered, he implored that, if the prayer of that petition was not complied with, he might be allowed to appear at least, one day at their Lordships' bar before the end of the present session. The Lords adjourned, and sent a message to the Commons, from their own house, that they would sit again on the 2nd of June. The next day in the House of Lords, a motion, grounded upon a letter of Mr Hastings, requiring only fourteen days for the time of his defence, was made by one of the peers, for an address to the King that he would not prorogue the parliament, till the conclusion of the trial. The proposition of Mr Hastings to confine his defence to any number of days, was treated by Lord Grenville as absurd. How could Mr Hastings know what questions would arise upon evidence, and how much time their Lordships might require to resolve them ; business which had occupied the principal part of the time that had already been spent ! How could he know what time

the Commons might require for their evidence and speeches in reply? How could he know what time their Lordships the Judges would require for deliberation on the evidence which they had heard? The motion was rejected<sup>1</sup>

BOOK VI  
 CHAP II  
 1791

On the 2nd of June, the seventy-fourth day of the trial Mr Hastings read a written paper, containing his defence. As far as the matter of it was anything in answer to the facts which have been charged as criminal, or tends to the demonstration of innocence, it has either been already adduced, when the fact or the charge was exhibited, or will hereafter be stated, when the evidence is brought forward on which the allegation was grounded. One or two incidents it is instructive to mention.

Mr Hastings declared, in the beginning of his paper, that if his judges would only then come to a decision, he would waive all defence. He risked nothing by this proposition, to which he well knew that the Lords would not consent. But he gained a great deal by the skill with which his declaration insinuated the hardship of delay.

It is observable that most of the ill-favoured acts of Mr Hastings's administration, the extermination of the Rohillas, the expulsion of Cheyte Sing, the seizure of the lands and treasures of the Begums, and the acceptance of presents, were all for the acquisition of money. Though Mr Hastings insisted, that all these acts were severally justifiable in themselves, without the plea of state necessity, yet state necessity, the urgent wants of the Company, are given, as the grand impelling motive which led to the adoption of every one of them. They are exhibited by Mr Hastings, as acts which saved the Company, acts, without which, according to him, the Company must have perished<sup>2</sup>.

Towards the end of his defence, he rises to a most exulting strain

"To the Commons of England, in whose name I am

<sup>1</sup> On this article of charge, see printed Minutes of Evidence, ut supra, p. 1303—1458, History of Trial, ut supra, part iv. p. 64—80.

<sup>2</sup> He asserted, "The resources of India cannot, in the time of war, meet the expenses of India." He denied that loans could be obtained. "I could not borrow to the utmost extent of my wants, during the late war, and tax posterity to pay the interest of my loans. The resources to be obtained by loans (those excepted for which bills upon the Company were granted,) failed early in my administration, and will fail much earlier in Lord Cornwallis's."

BOOK VI. dressed the Court. The object was fourfold. First, to  
 CHAP. II. make, under an appeal to Heaven, a solemn *asseveration*,  
 1793. of having in no instance intentionally sacrificed his public  
 trust to his private interest. Secondly a similar *assevera-*  
*tion*, that Mr Woodman received all the remittances which  
 during the period of his administration he had made to  
 Europe, and that at no time had his whole property ever  
 amounted to more than 100,000*l*. Thirdly to make a  
 strong representation of the great necessities of the state,  
 for the relief of which he had availed himself of the  
 irregular supplies for which he was accused; Fourthly to  
 charge the managers with a design to retard the decision  
 on the trial till another year and to entreat the Lords to  
 resist them.

Mr Burke and Mr Fox thought it necessary to take  
 notice of the great freedom with which the defendant was  
 at last emboldened to speak of the managers for the Com-  
 mons to repel the charge of procrastination so confidently  
 thrown upon them; and to challenge the proof that one  
*single moment of unnecessary delay had been created*  
*by them.*

The defence was finished on Tuesday the 28th of May  
 1793. On the return of the Lords to the chamber of par-  
 liament, they agreed, after a long discussion, to adjourn  
 further proceedings on the trial till Wednesday so night.  
 When this resolution was communicated to the Commons,  
 Mr Burke addressed himself to the House. He first con-  
 tended, that, considering the mass of evidence which it  
 was necessary to digest, the time was not sufficient to  
 prepare the reply. He next animadverted, in a style of  
 severity upon the appeals made by Mr Hastings to the  
 House of Lords, and calculated to bring odium upon the  
 House of Commons. A line of conduct had been pursued,  
 which brought affronts upon the managers, the servants  
 of the House. He said that the managers had been  
 calumniated.

In this, he alluded to an incident of rather an extra-  
 ordinary nature. On the 25th of May when Mr Burke  
 was cross-examining Mr Auriol, and pushing the witness  
 with some severity and at considerable length, the Arch-  
 bishop of York, who had already signalled his impatience  
 during the cross-examinations performed by Mr Burke,

and whose son, Mr Markham, had been in high employ- BOOK VI  
ments under Mr Hastings in India, "started up," says the CHAP II.  
historian of the trial, "with much feeling, and said, it was  
impossible for him silently to listen to the illiberal con-  
duct of the manager, That he examined the witness, as if  
he were examining, not a gentleman, but a pick-pocket  
That the illiberality and the inhumanity of managers, in  
the course of this long trial, could not be exceeded by  
Marat and Robespierre, had the conduct of the trial been  
committed to them." Mr Burke, with great dignity and  
great presence of mind, replied, "I have not heard one  
word of what has been spoken, and I shall act as if I had  
not" Upon reading the printed minutes of the evidence  
with due care, I perceive that Mr Burke treated the witness  
as an unwilling witness, which he evidently was, as a wit-  
ness, who, though incapable of perjury, was yet desirous of  
keeping back whatever was unfavourable to Mr Hastings,  
and from whom information unfavourable to Mr Hastings,  
if he possessed it, must be extorted by that sort of coercion  
which it is of the nature and to the very purpose of cross-  
examination to apply Of the tones employed by Mr  
Burke, the mere reader of the minutes cannot judge, but  
of the questions there set down, there is not one which  
approaches to indecorum, or makes one undue insinua-  
tion.<sup>1</sup> It was the right reverend prelate, therefore, who  
betrayed an intemperance of mind, which as ill accorded  
with the justice of the case, as with the decencies of either  
his judicial or his sacerdotal character

Alluding to that outrage, Mr Burke said, that an inves-  
tigation into the conduct of the managers was indis-  
pensable, that to render investigation answerable to its  
end, the utmost possible publicity should be given, and  
that for this purpose he should move for a committee of  
the whole House, before which he undertook to prove, that  
the managers had neither protracted the trial by unneces-  
sary delay, nor shortened it to the frustration of justice

<sup>1</sup> This may be doubted, there is one question which insinuates that Mr Auriol had falsely sworn to ignorance of a present or peshcush paid by the Raja, he had denied having heard of it The question was repeated more than once, and at last it is thus put "Then do you say, upon your oath, of any such peshcush privately paid from Dinagapore in 1779, 1780, or 1781, whether you have heard of any peshcush privately received by Mr Hastings in those years?" It is easy to conceive this urged in an insulting man-  
ner—W



BOOK VI. wanted no other support. Mr Burke replied, that he had  
 CHAP. II. been accustomed to insolent observations from the council;  
 1794. who, to do them justice, were as prodigal of bold assertions  
 as they were sparing of arguments." Before the Court  
 adjourned for deliberation, Mr Hastings again addressed  
 them, enumerated the miseries of delay prayed for expedi-  
 tion, and, in particular entreated their Lordships not to  
 adjourn, as usual, on account of the absence of the judges  
 during the circuit.

One of the reasons adduced by Mr Hastings for the de-  
 throne-ment or deprivation of Cheyte Sing was the bad  
 police of his country; to prove which, the outrages com-  
 plained of by Major Eaton were adduced. The managers  
 stated that they would now produce a letter of Major  
 Eaton's, to show he did not consider the supposed irregu-  
 larities worth inquiring into. The council for the de-  
 fendant objected to the evidence. The House informed  
 the managers, that the whole Benares narrative, and the  
 papers annexed, having been given originally by the ma-  
 nagers for the Commons, the evidence tendered was not  
 admissible. Be it so. But that does not hinder this  
 from proving the existence of the letter and the insignifi-  
 cance of the occurrences on which the plea of Mr Hastings  
 was erected.

As the defendant had produced in evidence the vote of  
 thanks offered to him by the Court of Directors on the  
 28th of June, 185; to rebut this evidence, the managers  
 offered to produce a paper printed for the information of  
 the proprietors, by order of the Court of Directors in 1783  
 This was vehemently resisted, not only by the council for  
 Mr Hastings, but by himself in person, as an ill-considered  
 and intemperate act of a Court of Directors, who were  
 his political enemies. "It was, therefore (he said), a spe-  
 cies of unparalleled cruelty to bring it forward to oppress  
 a man who had already suffered so much, for no other rea-  
 son which he could divine, than having at a time of great  
 public danger effectually served his country and saved  
 India. He relied upon their Lordships' humanity honour  
 and justice, that they would not suffer this minute of the  
 censure to be read; it being passed at a moment of intem-  
 perate heat and agitation, and utterly extinguished by a  
 subsequent resolution.

Mr Burke rose as soon as Mr Hastings had concluded, and contended that the paper was proper to be received, because it was an answer to a letter which the prisoner dared to write to the Directors his Masters, and to print and publish in Calcutta

BOOK VI  
CHAP II  
1794

Mr Hastings instantly rose, and said, "My Lords, I affirm that the assertion which your Lordships have just heard from the Manager *is false* I never did print or publish any letter in Calcutta that I wrote the Court of Directors I knew my duty better That assertion is a libel, it is of a piece with every thing that I have heard uttered since the commencement of this trial, by that *authorised, licensed*,—(and after a long pause, he added, turning to Mr Burke) *Manager!*"

Mr Burke continued to affirm that Mr Hastings *had* printed and published the letter in Calcutta Mr Hastings loudly called out to him, it was not true, and the counsel said to Mr Burke, "*No! no!*"

The Lords adjourned, put the question to the judges, received their answer, and announced to the managers on a following day, "That it was not competent for the managers for the Commons to give in evidence the paper read in the Court of Directors on the 4th of November, 1783, and then referred by them to the consideration of the Committee of the whole Court, and again read in the Court of Directors on the 19th November, 1783, and amended, and ordered by them to be published for the information of the proprietors—to rebut the evidence given by the defendant of the thanks of the Court of Directors, signified to him on the 28th June, 1785" No decision is more curious than this The same sort of evidence exactly, which the Lords allowed to be given *for* Mr Hastings, they would not allow to be given *against* him, one proceeding of the Court of Directors, as well as another It might have been said, that a prior decision of the same court was superseded by a posterior, but this should have been said after both were submitted to consideration, because it might be so, or it might not, according to the circumstances of the case

On the 1st of March, the Lords not choosing to proceed without the assistance of the Judges, during their absence on the circuit, adjourned the court to the 7th of April. On

BOOK VI. tion of it and that the whole of the present session, except a small interruption occasioned by the examination of the Marquis Cornwallis, has been employed by the honourable managers, notwithstanding that your Petitioner has, for the purpose of despatch, in addition to the sacrifices made for a similar purpose in the last year waved his right to observe, by his counsel, on the new evidence adduced in reply

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194

"Your Petitioner begs leave again to suggest to your Lordships the unexampled duration of his trial the indefinite period to which it may be still further protracted and the extreme vexation and injury to which he would be subjected, if the intention on the part of his prosecutors should be suffered to have effect.

"He implores, therefore, of your Lordships humanity and justice, that such measures may be adopted on the part of your Lordships, as may assure to your Petitioner the speedy termination of this painful and unparalleled proceeding and, further if need should be, that your Lordships will graciously condescend, in such a manner as to the wisdom and dignity of your Lordships may seem meet, to become sponsors to his Majesty's goodness in his behalf, that the present session of parliament may be permitted to continue till the reply on the part of the honourable managers for the House of Commons shall be fully and finally closed.

On the opening of the Court, on the first day after this petition to the House of Lords, Mr Burke, says the historian of the trial, began, by complaining in very strong terms, both of the Court and Mr Hastings of the latter for writing a most audacious libel, under the name of a petition and of the former for having recorded it in their Journals. What the House of Commons would do, in consequence of this insult, he could not tell, as he had not had an opportunity of consulting the House upon it he should, therefore, proceed as if no such libel had been written."

Mr Burke concluded his speech on the 16th of June. On the 20th, in the House of Commons, Mr Pitt rose to move, That the thanks of the House should be given to the managers appointed by them to conduct the prosecution against Warren Hastings, Esquire, for their faithful

management in the discharge of the trust reposed in them" The motion was seconded by Mr Dundas Mr Pitt declared, that the magnitude and difficulty of the task which had been imposed upon the managers, and the ability and diligence with which it had been sustained, excited the strongest sentiments in their favour Delay was the great source of complaint, but if the long intervals of the Court were excluded, and the number of hours were computed which had actually been bestowed upon the business of the trial, it would be found, compared with the quantity of matter essentially involved in the cause, by no means unreasonably great "The next point," he said, "to be considered was, of this time, whether great or small, how much had been occupied by the managers, and how much by the defendant, as well in the several replies, as by the unceasing and unwearied objections, taken on his part, to almost every thing offered on the part of the prosecution. To prove this disposition of objecting to evidence, gentlemen had but to look to the report made, by their committee, on the causes of delay They would there find it proved —It was, in the next place, to be recollected, that then managers had to discuss questions which they could not relinquish without abandoning the privileges of the Commons —Upon all these grounds he would not allow that, if any unnecessary delay existed, any portion of it was chargeable to the managers for that House"

Mr Sumner, regretting the unusual necessity which made him vote against the minister, opposed the motion He said, "he was happy to avow himself a very great admirer of Mr Hastings, that he looked up to him with every sentiment of regard and affection," professing at the same time, "that his objections to the present motion arose from circumstances, utterly independent of Mr Hastings" He excepted to the time of the vote, which, though not contrary to precedent, would have something of the effect of a pre-judging of the cause However, he at last confessed, that he should have little objection to the vote, if regarded only the rest of the managers without including Mr Burke Against him, he ran forth into a long invective, his anger appearing to be directed against the strong terms of disapprobation which Mr Burke had scattered

BOOK VI. "8. Is Warren Hastings, Esq guilty or not guilty of  
 CHAP. II. high crimes and misdemeanours, charged upon him by the  
 Commons in the sixth article of charge, in so far as relates  
 1708. to his having first fraudulently solicited as a loan and of  
 his having afterwards corruptly and illegally taken and  
 retained as a present or gift, from Raja Nobkissen, a sum  
 of money amounting to 34,000*l.* sterling and of his having,  
 without any allowance from the Directors, or any person  
 authorised to grant such allowance, applied the same to  
 his own use, under pretence of discharging certain ex-  
 penses said to be incurred by the said Warren Hastings in  
 his public capacity?—Guilty five.—Not Guilty twenty

9 Is Warren Hastings, Esq guilty or not guilty of  
 high crimes and misdemeanours, charged upon him by  
 the Commons in the fourth article of charge, in so far as  
 relates to his having, in the year 1781, granted a contract  
 for the provision of opium for four years, to Stephen  
 Sullivan, Esq without advertising for the same, and upon  
 terms glaringly extravagant and wantonly profuse, for  
 the purpose of creating an instant fortune to the said  
 Stephen Sullivan?—Guilty five.—Not Guilty nineteen.

"10. Is Warren Hastings, Esq guilty or not guilty of  
 high crimes and misdemeanours, charged upon him by the  
 Commons in the fourth article of charge, in so far as  
 relates to his having borrowed money at a large interest,  
 for the purpose of advancing the same to the contractor  
 for opium, and engaging the East India Company in a  
 smuggling adventure to China?—Not Guilty twenty  
 five.

11. Is Warren Hastings, Esq guilty or not guilty of  
 high crimes and misdemeanours, charged upon him by  
 the Commons in the fourth article of charge, in so far as  
 relates to the contract for bullocks granted to Charles  
 Croftes, Esq.?—Guilty three.—Not Guilty twenty  
 three.

12. Is Warren Hastings, Esq guilty or not guilty of  
 high crimes and misdemeanours, charged upon him by  
 the Commons in the fourth article of charge, in so far as  
 relates to his having granted the provision of bullocks to  
 Sir Charles Blunt by the mode of agency?—Guilty three  
 —Not Guilty twenty three

"13. Is Warren Hastings, Esq guilty or not guilty of

high crimes and misdemeanours, charged upon him by the Commons in the fourth article of charge, in so far as relates to the several allowances charged to have been made to Sir Eyre Coote, and directed to be paid by the Vizir for the use of the said Sir Eyre Coote?—Guilty, four — Not Guilty, twenty-two

BOOK VI  
CHAP II

1795

“14 Is Warren Hastings, Esq guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the Commons in the fourth article of charge, in so far as relates to the appointment of James Peter Auriol, Esq to be agent for the purchase of supplies for the relief of the Presidency of Madras, and all the other Presidencies in India, with a commission of fifteen per cent?—Guilty, four —Not Guilty, twenty-two

“15 Is Warren Hastings, Esq guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the Commons in the fourth article of charge, in so far as relates to the appointment of John Bell, Esq to be agent for the supply of stores and provisions for the Garrison of Fort William in Bengal, with a commission of thirty per cent?—Guilty, three —Not Guilty, twenty-three

“16 Is Warren Hastings, Esq guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the residue of the impeachment of the Commons?—Guilty, two —Not Guilty, twenty-five”<sup>1</sup>

On the 29th of May, at the desire of nine Proprietors, a General Court of the East India Company was held, at which two resolutions were passed, recommending that indemnification should be made by the Company to Mr Hastings, for the legal expenses incurred by him in making his defence, and that, in consideration of his important services, an annuity of 5000*l* out of the territorial revenue should be granted to him and his representatives, during the term of the Company's exclusive trade. Both questions were determined by ballot, one on the 2nd,

<sup>1</sup> In this concluding part of the business of the impeachment, has been followed a volume in quarto entitled “Debates of the House of Lords, on the Evidence delivered on the Trial of Warren Hastings, Esquire, Proceedings of the East India Company, in consequence of his Acquittal, and Testimonials of the British and Native Inhabitants of India, relative to his Character and Conduct whilst he was Governor-General of Fort William in Bengal.”—This was a volume compiled and distributed under Mr Hastings' directions, and at his expense but never published. The contents of it, however, are found almost verbatim in the History of the Trial, (part viii) to which reference has been so frequently made

BOOK VI. \* 8 Is Warren Hastings, Esq guilty or not guilty of  
 CHAP II. high crimes and misdemeanours, charged upon him by the  
 Commons in the sixth article of charge, in so far as relates  
 1786. to his having first fraudulently solicited as a loan, and of  
 his having afterwards corruptly and illegally taken and  
 retained as a present or gift, from Raja Nobkissen, a sum  
 of money amounting to 34,000*l.* sterling and of his having  
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BOOK VI  
 CHAP II  
 1795

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## BOOK VI.

## CHAP. II.

1794

corruption. It was never attempted to be proved that he had, in any way benefited by the advantageous contracts by which he secured opulence to others.

To the principles of his foreign policy no shadow of guilt can be attached. The safety and honour of British India were manifestly the motives of all his actions. Whether he was not at times less warlike than the occasion called for may admit of conjecture; but undoubtedly the times were critical—great firmness was demanded—and his error was a venial error when its deficiency would have been an inexcusable crime.—W

## APPENDIX.

*"Report from the Committee of the House of Commons appointed (viz on the 5th of March, 1794) to inspect the Lords Journals in relation to their Proceedings on the Trial of Warren Hastings, Esq and to report what they find therein to the House which Committee were the Managers appointed to make good the Articles of Impeachment against the said Warren Hastings, Esq and who were afterwards (viz on the 17th of March, 1794) instructed to report the several matters which have occurred since the commencement of the said Prosecution, and which have, in their Opinion, contributed to the Duration thereof to the present Time, with their Observations thereupon.*

A SHORT account of the spirit of this document, and of the principal matters which it contains, is of high importance. It is a criticism not only upon this trial, but upon the law; a thing in this country of great rarity from a source of high authority. It would also be a thing of great utility if it would show the people of the country what they have been carefully disciplined not to believe, that no greater service can be rendered to the community than to expose the abuses of the law without which the hope of its amendment is for ever excluded. The view is incomplete, and but superficial, which Mr Burke, who was the author of the document, takes, even of that small portion of the mass of abuses, of which he had occasion to complain. He neither stretched his eye to the whole of the subject, nor did he carry its vision to the bottom. He was afraid. He was not a man to explore a new and dangerous path without associates. Edmund Burke lived upon applause—upon the applause of the men who were

able to set a fashion ; and the applause of such men was not to be hoped for by him who should expose to the foundation the iniquities of the juridical system In the case of public institutions, Mr Burke had also worked himself into an artificial admiration of the bare fact of existence , especially ancient existence Every thing was to be protected , not because it was good, but, because it existed Evil, to render itself an object of reverence in his eye, required only to be realized Acutely sensible, however, to the spur of the occasion, he felt the abuses which crossed him in his path These he has displayed with his usual felicity of language , and these it is of importance with respect to the imitative herd of mankind to have stamped with the seal of his reprobation

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I Under the first head of the report, an analysis was given of the duration of the trial, and of the causes to which that duration was owing At that time the trial had occupied, through six years, only 118 days Of these it appeared that in speeches, opening, and summing up, the managers consumed nineteen days , that in speeches, opening, and summing up, and his own addresses, the defendant and his counsel had consumed twenty-two days In documentary and oral evidence fifty-one days were employed by the managers , and twenty-three on the part of the defendant But, as the managers brought forward the case, they were under the necessity of adducing almost all the documents which bore upon the facts, and to interrogate almost all the witnesses from whom, on either side, any information could be derived A great part of this evidence the defendant, at the time of his defence, had only to apply Lastly, and chiefly, the greater part of the long and harassing contentions about the admissibility of evidence, took place during the fifty-one days which are set down to the account of the managers, but of which the greater part was consumed on account of the defendant

"Thus last cause of the number of sitting-days," said the report, "your Committee considers as far more important than all the rest.

"The questions upon the admissibility of evidence, the manner in which these questions were stated, and were decided , the modes of proceeding, the great uncertainty

BOOK VI. the House of Commons, and in a great measure the judicial  
CHAP. II. privileges of the Peers themselves, any intermeddling  
 1794. in which, on their part, we conceive to be a dangerous and unwarrantable assumption of power”

Such were the effects upon the privileges of the Lords and the Commons. Let us next observe what they were upon objects of much greater importance.

“The operation of this method is, in substance, not only to make the judges masters of the whole process and conduct of the trial but, through that medium, to transfer to them the ultimate judgment of the cause itself and its merits.

These essential innovations tend, as your Committee conceives, to make an entire alteration in the constitution and in the purposes of the High Court of Parliament, and even to reverse the ancient relations between the Lords and the Judges.

It tends wholly to take away from the Commons the benefit of making good their case before the proper Judges, and submits this high inquest to the inferior courts.

“Your Committee sees no reason why on the same principles and precedents, the Lords may not terminate their proceedings, in this and in all future trials, by sending the whole body of evidence taken before them, in the shape of a special verdict, to the Judges, and may not demand of them whether they ought, on the whole matter to acquit or condemn the prisoner. Nor can we discover any cause that should hinder them from deciding on the accumulative body of the evidence, as hitherto they have done in its parts, and from dictating the existence or non-existence of a misdemeanour or other crime in the prisoner as they think fit,—without any more reference to principle or precedent of law than hitherto they have thought proper to apply in determining on the several parcels of this cause.

Your Committee apprehends that very serious inconveniences and mischiefs may hereafter arise from a practice in the House of Lords, of considering itself as unable to act without the judges of the inferior courts, of implicitly following their dictates, of adhering with a literal precision to the very words of their responses, and putting

them to decide on the competence of the managers for the Commons,—the competence of the evidence to be produced,—who are to be permitted to appeal,—what questions are to be asked of witnesses, and, indeed, parcel by parcel of the whole of the gross case before them, as well as to determine upon the order, method, and process of every part of their proceedings. The judges of the inferior courts are by law rendered independent of the Crown. But thus, instead of a benefit to the subject, would be a grievance, if no way was left of producing a responsibility. If the Lords cannot, or will not, act without the Judges; and if (which God forbid!) the Commons should at any time find it hereafter necessary to impeach them before the Lords, this House would find the Lords disabled in their functions, fearful of giving any judgment on matter of law, or admitting any proof of fact without them, and having once assumed the rule of proceeding and practice below as their rule, they must at every instance resort, for their means of judging, to the authority of those whom they are appointed to judge."

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 1791

On the side of judicature, then, the people were left without a remedy. The Lords, by nullifying themselves, took away every legal check upon the iniquity of judges, because the judges could only be tried before the Lords, and to be tried before the Lords was to be tried by themselves.

For the departure from the ancient practice of framing a general question, within which the particular point in doubt was comprehended, to the new and extraordinary practice of sending the particular point itself to the judges, before whom the cause and its evidence was not brought, two possible causes are assignable. First, Talent, and the exercise of talent, were necessary to the framing of general questions, but talent was possibly scarce, and the labour of thought undoubtedly painful. Secondly, General rules, framed to embrace the particular instances, decided as they were by the judges, would, in many cases, not have borne to be expressed, their efficacy in corrupting the administration of justice, would have been sufficiently visible, to excite the indignation of the world.

They would have been seen to be, what, by the com-

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## CHAP. II.

1794.

We may here observe one of the most remarkable of the expedients of the lawyers. What they have laboured from an early date to create and establish in the minds of their countrymen is—a belief, that it is criminal ever to express blame of them or their system. This endeavour has hardly been less diligent than it has been successful. The belief has grown into one of the most rooted principles in the minds of the more opulent classes of Englishmen. That it is one of the most pernicious prejudices is indisputable. For it is obvious, that it confers upon the lawyers, as far as it goes, a complete and absolute license to make the system of which they are the organs, and upon which all the happiness of society depends, as favourable to their own interests, at the expense of those of the community as ever they please. It is, therefore, a belief artificially created by the lawyers, for the protection of their own abuses and will never be allowed to retain a place in the mind of any enlightened and disinterested man. The grand remedy for the defects of government is to let in upon them publicity and censure. There are no abuses in the exposure of which society is more interested than those of the law. There is no misconduct in the exposure of which it is more interested than that of the lawyers.

The first thing observable in the speech of this great lawyer is the *fiction*, under which he speaks of the report of a committee of the House of Commons. It was a *pamphlet* published by one Debrett. The regulations of Parliament required, that notice should not be taken in one of the Houses, of any thing done in the other. The speech of the great lawyer then, was a flagrant violation of that rule; for the whole purport of it was to arraign the *matter* of the writing, which was the production of the House of Commons, not the mere act of *publication*, in which alone Debrett was concerned. A rule that can be set aside by a

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dale; and, upon the motion of the serjeants, an information was filed against him by the Attorney-General, for libel on the Commons House of Parliament. The cause was heard in the Court of King's Bench, in December 1793. The occasion was rendered remarkable by the eloquence of Erskine who defended Stockdale, and made speech in his defence which is considered as one of the most brilliant specimens of his oratory. Although only incidental to the subject, there are several passages in the speech which powerfully vindicate the conduct of Hastings.—See Erskine's Speeches, vol. II. 304.—W

fiction, that is, by a declaration more or less false, adapted to the purpose, is not a rule that is good for much, as it will never be in substance regarded when any one has a motive for breaking it

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The vindictive Judge here speaks of two things, *vilifying*, and *misrepresenting*. If he meant to say, that the report of the committee of the House of Commons had misrepresented any thing done by the Judges, of either of the two descriptions, concerned in the trial of Mr. Hastings, it is not true. He could not have mentioned a single fact which was not justly stated, nor a single censure, with respect to which, the fact against which it was pointed, and the reasons for which it was applied, were not both of them distinctly assigned. Nothing could be further from misrepresentation than this.

Further, the offended Judge speaks of *two* things, *vilifying*, and *misrepresenting*, as if they were one and the same thing, and thereby creates a deceitful and mischievous confusion. *Misrepresenting*, which is conveying a false conception of another man, is always bad. It may or it may not imply guilt, according to the state of the mind from which it issued. But all means should be employed both to prevent its existence, and to provide a remedy for its effects. *Vilification* is a very different thing, and is subject to very different laws. Vilification, as distinct from misrepresentation, is the conveying a true character of a bad man. The case is not easy to be conceived, in which that is not good for society. There can be no case, in which to publish the true character of a bad ruler is not good for society. There can be no case, in which to publish the true character of a bad *Judge* is not pre-eminently beneficial to society.

Observe the sleight of hand with which the artificer endeavours to pass his counterfeit coin. *Vilification* and *misrepresentation*, are both spoken of as the same thing. Misrepresentation is unquestionably bad, and vilification being shuffled in, under the same cover, is spoken of as bad also. And then comes the doctrine, delightful to the lawyer, that to speak with censure of the dignitaries of the law, on any occasion, or in any shape, is the height of criminality, and that "to reflect," as they call it, upon the Judges, that is, to make just remarks upon ill-be-

## BOOK IV

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as any which was regarded as sufficiently probable to form a rational basis of action. Immediately after the return of Tippoo from the siege of Mangalore, and the conclusion of his treaty with the English in 1784, he set up against the Nizam a demand for Beegapore. About the same time a dispute arose between Tippoo and the Poona ministers, respecting a part of those acquisitions from the Mahratta territory which had been made by Hyder during the Peshwahship of Ragoba. These circumstances, together with the jealousy if not the fears, which the power and character of Tippoo inspired into these neighbouring chiefs, produced a connexion between them, in consequence of which a junction was formed between a Poona and Hyderabad army in the beginning of the year 1786. The terms of reprobation in which Englishmen in India were accustomed to speak of the peace of 1784, led the Poona ministers, according to the opinion of Colonel Wilke, to expect that the English would take part in this confederacy against Mysore; and he is not well pleased with Lord Cornwallis, who lost no time in letting them know that no project of an alliance, or any other measure of an aggressive nature, would be entertained by his nation. After a year of warring, attended by no considerable result, Tippoo and his enemies were both weary of the contest. A peace was concluded, on terms not very favourable to the Sultan, who was alarmed at the progressive accumulation of the instruments of war in the hands of the English and desirous of an interval to settle his dominions on the coast of Malabar. In these circumstances, Lord Cornwallis was under no apprehension of a union between Tippoo and the Mahrattas: he thought it by no means probable, that, without the prospect of alliance with the French, he would provoke the dangers of an English war and he concluded with some assurance that, with the support of Tippoo alone, the Nizam would not hazard the dangers of resistance. Still, though not probable, it was by no means impossible, that a connexion subsisted, or might in consequence of this requisition be formed, between the Nizam and Tippoo; which, "no doubt," said the Governor-General, would bring on a war calamitous to the Carnatic, and distressing to the Company's affairs. Yet if ever the claim upon

the Guntoor circar was to be enforced, the time was now arrived, and with regard to the result, should war ensue, it was, in the opinion of this ruler, impossible that for one moment a doubt could be entertained <sup>1</sup>

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The resolution being taken, the execution was skilfully planned. Captain Kennaway, a gentleman whose address was supposed well calculated to soften what might appear offensive in his commission, was sent to the court of the Nizam, instructed to employ conciliatory language, and to show the utmost liberality, in regard to every other point respecting which adjustment was required. No intimation was to be given to the Nizam of the proposed demand, till after the arrival of Captain Kennaway at his court. At the same time, instructions were sent to the Residents at the several durbars, of the Peshwa, Sindia, and the Raja of Berar, to give to these powers a full explanation of the proceeding, before intelligence of it could reach them from any other source. The government of Madras, under specious pretences, conveyed a body of troops to the neighbourhood of the circar, and held themselves in readiness to seize the territory before any other power could interpose, either with arms or remonstrance.

Captain Kennaway was yet on his journey to Hyderabad, when the following letter from the Governor-General, dated 3rd of July, 1788, went after him by despatch — “Sir,—I have this instant received advice from Sir Archibald Campbell, that the Raja of Cherika has actually committed hostilities on the Company’s possessions at Telli-cherry by order from Tippoo. Sir Archibald appears likewise to be decidedly of opinion, that Tippoo will immediately attack the Raja of Travancore. This may, however, I think, be doubtful. Unless this alarm should be blown over, previous to your arrival at Hyderabad, of which you cannot fail of having certain information, you will, of course, recollect that part of your instructions, and, instead of declaring the real object of your mission, confine yourself to the general expressions of friendship, and assurances of our earnest desire to cultivate a good understanding between the two governments.”

<sup>1</sup> Copy of a Letter from Earl Cornwallis to Sir Archibald Campbell, dated Calcutta, 30th of May, 1788. Ordered to be printed, 1792. *Wilk’s Historical Sketches*, ii 535—559, iii 36



BOOK VI. such an enemy as Tippoo, rather provoked attack, than  
 CHAP. III. afforded any permanent protection.

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Some time after the erection of the line, Hyder who was extending his conquests over the Malabar Rajas, carried his arms against the territory of the King of Cochin, at least the part which was without the wall of Travancore and the King rather than lose that part of his dominions, consented to become the tributary of Hyder.

The Raja of Cochin waited upon Tippoo, in 1778, at Palacatcherry whither he had proceeded after leaving Calicut. Upon his return, this Raja reported the substance of his conference with Tippoo to the Raja of Travancore. Tippoo questioned him why his visit had not been earlier when something useful might have been effected but now the rainy season was at hand. Tippoo asked, if the delay had been occasioned by the Raja of Travancore. He told the Raja that he should demand back those districts of Cochin, which had been given to the Raja of Travancore, and that he might receive the aid of the Mysore troops to enforce the claim. It was doubtful to the Raja of Travancore whether the report of the King of Cochin was deceitful or true but it indicated in either case the hostile designs of Tippoo.

The Raja made known his fears to the government of Madras, and requested a company of Sepoys, with an English officer as a demonstration to the Sultan of the assistance which he might expect to receive. Sir Archibald Campbell, who then presided over the Councils of Madras, not only complied with the Raja's demand, but desired his permission to canton some battalions of the Company's troops along the strong grounds behind the wall. For this service, two battalions of Sepoys, with their proportion of artillery were soon after sent from Bombay.

The arrival of the rainy season prevented active operations during the remainder of the year 1783, but in the month of May of the following year Tippoo again descended to the coast, and began with summoning the fort of Cranganore. This, and another place, named Jaycottah,<sup>1</sup> belonged to the Dutch, and were maintained as a species of outwork to their grand settlement at Cochin.

<sup>1</sup> Written Ayscottah, by Col. Wilks.

They were situated close upon the wall of Travancore, at its maritime extremity, and regarded by the Raja as of the utmost importance for the defence of the lines. He prepared himself to join with the Dutch in defending them, he represented to the English not only that Cranganore and Jaycotah were the very key to his country, but that he was bound in a defensive treaty with the Dutch, he, therefore, made earnest application to the English government to grant him that assistance which the present exigency appeared to require.

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Mr Hollond, who was now placed at the head of the Madras government, happened to be very pacifically inclined. He informed the Raja, that, except for the immediate protection of his own dominions, he could not receive assistance from the English, and enjoined him, in a particular manner, to abstain from every act which could raise the jealousy of Tippoo, or afford him a pretext for invading Travancore.

Though Tippoo made several demonstrations, and went so far as to bring heavy guns from Palacatcherry, as if for the reduction of Cranganore, he retired before the middle of May, without commencing the attack, and placed his troops at Palacatcherry and Coimbatore. It was confidently expected that he would return at the end of the monsoon, and that his first operations would be against the possessions of the Dutch. Were these in his hands, Travancore would be an easy conquest, and, in the opinion of the Company's Resident, it would even be difficult, if not impossible, for the English detachment to retreat.

In the meantime, intelligence was received from the Commandant at Tellicherry, that, during the whole of the rains, that settlement had been environed by the troops of Tippoo, and shut up as in a state of rigorous blockade, that a chain of posts had been established surrounding the place, some of them so near, as to be within musket-shot of the lines, that his troops had strict orders, which they rigidly obeyed, to prevent the admission of every article of supply, that his boats were as vigilant for the same purpose by sea, as the troops were by land, and that the necessaries of life had, in consequence, risen to an exorbitant price.

The assurance, conveyed from the Company's governor

BOOK VI. their combined forces any injury to any of them which  
 CHAP. III. Tippoo thereafter might accomplish or attempt.

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It was declared by the Governor-General to both the parties with whom he was endeavouring to contract, that the objects were four at which he should aim by the war. To exact from the enemy indemnification for the expense or loss imposed upon the Company by the war. To make him restore to the Nizam and Peshwa, if they should take part in the conflict, whatever he or his father might have taken from those powers. To wrest from him all that he possessed of the Carnatic Payen Ghaut. And, in consequence of the barbarity which he had exercised on the Nairs of Malabar to set them free from his dominion.

The gratification of their resentment for the losses inflicted on them by Tippoo and his father the removal of the terrors with which they were haunted by his ambition and power the prospect of recovering what they had lost, and of elevating themselves upon his ruin, were powerful aids towards obtaining the alliance of the Nizam and Mahrattas.

While the mind of the Governor-General was thus intensely engaged in preparing the means of war upon the largest scale, a very different spirit prevailed at Madras and, on the 8th of February he despatched to that Presidency a letter of complaint and crimination. He charged the President and Council with neglect of duty and disobedience of orders, in not having made the prescribed provision of draught cattle for the army in not having suspended the business of the Company's investment; and, after they had received an explicit declaration from the Governor-General in Council, of his determination to protect the Raja of Travancore in his purchase of Oranmore and Jaycootah if those places belonged not to the Raja of Cochin but the Dutch, in their having, in their correspondence with Tippoo and even with the Raja of Travancore and the English Resident in his camp, withheld that declaration, and thereby discouraged a faithful ally in the defence of his country against an enemy who

<sup>1</sup> See the despatch to the Resident at Poonah, dated the 22nd of March.

On the point of investment, the Governor-General afterwards retracted his recourse, as it was explained, that nothing more had been done than what was necessary to fulfil the contract with the Philippine Company.

was within a few miles of his frontiers, and with the insolence and violence of whose character they had long been fully acquainted " BOOK VI.  
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To his early decision against the purchase of the two forts, Governor Hollond adhered. On the allegation of the Raja that Sir Archibald Campbell encouraged the purchase, he had replied, <sup>1</sup> "As you received early information of Governor Campbell's departure, it was not acting a friendly part to prosecute negotiations of so much importance without communicating their commencement and progress to me, upon my advising you of my succession to the government." Even after the right of the Dutch appeared to be decidedly proved, still he maintained that the bargain was an offence against Tippoo, not to be justified by the law of nations because with equal propriety might the Dutch make sale to the French of Sadras and Pulicate, within a few miles of Fort St George. And lastly, he denied that the importance of the places in question was an adequate compensation for the evils of war.

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To these reasonings the Governor-General made the following reply. "In your letter, dated 3rd of January, you thought proper to lay down principles, as being, in your opinion, founded on the law of nations, respecting the Raja and the Dutch, which militate against the spirit of our orders, and which we conceive it was not regularly within your province to discuss, as you are not responsible for the measure directed."

In as far as the government of Madras acted upon their own notions of justice or policy in disobedience to the express orders of those whose commands they had undertaken to obey, they were guilty of a most serious offence, but in laying their opinions and reasons before the governing authority, they practised a virtue, from which the governing authority might derive essential advantage, and merited no insulence of reply.

To their reasonings, at the same time, very strong objections applied. In the two cases, that of Cranganore and Jaycotah, and that of Pulicate and Sadras, the circumstance which constituted the material part of the question, that, on which its decision, if founded on rational principles, would depend, was perfectly reversed. Pulicate

<sup>1</sup> In his letter of the 16th of November

BOOK VI. gence was not credited; and that he had orders to  
 CHAP. III. remain.

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A council of war having determined on retreat, the troops had crossed the river in basket boats, and were on the march next morning by eight o'clock, leaving the provisions collected in Sattimungul, and three pieces of cannon, behind. Tippoo found considerable difficulty in getting his army ready for pursuit, and marched at last with only a part of it. Two o'clock arrived before he could bring his infantry into action. He then meditated a decisive blow; but met with great obstructions from the strong hedges with which the ground was enclosed and, being at last alarmed, by the report that General Medows was at hand, a report of which the English commander dexterously availed himself, he drew off, on the approach of night.

During the action, Colonel Floyd received a despatch, in which he was told that General Medows on the 14th would march for Velladi. This was not on the direct road from Coimbatore to Sattimungul, nor that in which Floyd was retreating, and from the place at which he had arrived to Velladi, was twenty miles. The only chance, however for saving the army was to force the junction. He began his march at two o'clock in the morning, and without seeing the enemy reached Velladi at eight at night, when the troops had been without provisions, and literally fasting, for three days. The General had already passed ten miles in advance of Velladi. He was immediately apprized of the state of the detachment, and next morning retraced his steps. The army then marched back to Coimbatore, where they were joined by the division of Colonel Stuart from Palacatcherry.

The Sultan, disappointed in his expectation of cutting off the dispersed divisions of the English army in detail, now turned his operations against the chain of their depôts. This is described by Colonel Wilks as very imperfect. "Caroor" he says, could scarcely be deemed a good depôt. Errood was better qualified to contain than protect stores and Sattimungul was ill adapted to either purpose." Errood, from which, in contemplation of what happened, the greater part of the garrison had been withdrawn, capitulated as soon as the enemy appeared. After

emptying the storehouses of Errood, the Sultan marched in a line directly south, and was followed by the English army, which left Coimbatore on the 29th of September, and in six marches arrived at Errood. On the day on which the English left Errood, the Sultan proposed to encamp in a situation about sixteen miles distant, whence he could march, either upon a convoy that was advancing from Caroor, or upon Daraporam, or upon Coimbatore, according to the direction which the English might take.

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The English army came up, and he increased his distance by a nocturnal march. General Medows waited to protect his convoy from Caroor, and the Sultan marched toward Coimbatore. He knew that the field hospital, valuable stores, and the battering train, were left with a very feeble garrison, but after performing a march in that direction, his intelligence, which never failed him, announced the important fact, that Colonel Hartley had just ascended from the Malabar coast, and reinforced Coimbatore. One point of his plan yet remained, he marched rapidly toward the south, found Daraporam miserably provided for defence, carried his approaches to the ditch; and on the 8th of October entered the place by capitulation.

The English General, alarmed by the danger which had threatened the loss of Coimbatore, returned in haste to that grand dépôt, which he resolved to render as strong as circumstances would admit.

While he was employed in strengthening Coimbatore, an object of great importance engaged the attention of Tippoo. Colonel Kelly, the officer who commanded the corps of defence before the passes which led more immediately to the Canatic from Mysore, died, and was succeeded by Colonel Maxwell, toward the end of September. On the 24th of October, in obedience to orders received from General Medows, this corps invaded Baramahl. Of this the Sultan was not long without intelligence. Leaving about one-fourth of his army to watch the motions of General Medows, he marched with the remainder in great haste toward Baramahl. On the 9th of November, several bodies of his light cavalry reached Colonel Maxwell's ground. On the 11th, the Colonel's cavalry, one regiment, allowed themselves, inveigled in pursuit, in a defile, to be attacked by a great superiority of force, and were driven back with

BOOK VI. self beyond my ability and exercised every kind of  
 CHAP. III. hardship and oppression over the ryots, in collecting  
 1780. money to pay the Company though, in doing this, I  
 suffer all those pangs which a father feels when he is  
 obliged to oppress and injure his own son. Such is the  
 impoverished state of the country that it is by no means  
 equal to the burden and I most sincerely and with great  
 truth do declare, that I am necessitated to draw the very  
 blood of my ryots to pay my present heavy instalment to  
 the Company.<sup>1</sup> He not only remonstrated with the utmost  
 vehemence against the additional payments which the  
 Directors commanded to be imposed upon him; but he  
 earnestly prayed for relief, even from those which, by the  
 treaty with Sir Archibald Campbell, he had engaged him-  
 self to sustain. Nor was it till a period subsequent to  
 the arrival of General Medows, that his consent to the  
 new burdens was obtained.

While the Nabob was pressed on this important sub-  
 ject, he had recourse to an expedient which succeeded so  
 well when employed with Mr Hastings. He lodged an  
 accusation against the Governor of Madras and sent a  
 letter privately to the Governor-General, through a subal-  
 tern in the Company's army. The grounds of the accusa-  
 tion the Governor-General directed to be examined by a  
 Committee. In regard to the private letter and its bearer  
 he adopted a line of conduct differing widely from that  
 which, on a similar occasion, had been pursued by Mr.  
 Hastings. If I had not," said he, in his answer to the  
 Nabob, "believed that the conduct of Lieutenant Cochrane  
 proceeded only from inadvertency I should have been  
 highly displeased with him for presuming to undertake  
 the delivery of a letter to me of such serious import from  
 your Highness, without the knowledge or sanction of the  
 Madras government; which I am sure, upon a little re-  
 flection, your Highness must agree with me, in thinking  
 the only regular and proper channel of communication  
 between us."

When the war broke out, the demands of the English  
 for money became more urgent the backwardness of the  
 Nabob in his payments continued the same. "After a

<sup>1</sup> See a volume of papers, *ut supra*, pp. 17, 18, and 20.  
 Ibid. p. 24.

most attentive consideration of the subject," say the President and Council of Madras, in their political letter, dated the 16th of September, 1790, "we resolved to submit to the supreme government the correspondence which had taken place between our President and the Nabob, and to point out to his Lordship in Council the impolicy of depending for our principal resources, at a time when the greatest exertions were necessary, and pecuniary supplies were of the utmost importance, upon the operations and management of the Nabob's government, of which the system was perhaps as defective and insufficient as any upon earth. And we did not hesitate to declare it as our unqualified opinion, that this government ought, during the war, to take the Nabob's country under their own management, as affording the only means by which the resources to be derived from it could be realized, and the

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BOOK VI. We find also that the collector at Trichinopoly was en-  
 CHAP. III. counteracting many difficulties, in establishing the Company's  
 1790. authority in the different districts, from the opposition of  
 'an armed force' and that so very industrious have the  
 Nabob's sons been in throwing obstacles in the way that  
 not an account was to be found in any of the village Out-  
 cherics, nor any public servant who could give the smallest  
 information and that they have been particularly active  
 in disposing of all the gram in the country. We likewise  
 observe, in the intelligence from Tanjore, that the Raja  
 had been recently alienating several villages, and that the  
 repairs of tanks and water-courses had been neglected,  
 that the Company's collectors might not be able to pro-  
 duce much income. Such friends and allies can be looked  
 upon as little better than open and declared enemies. And  
 such a conduct on their part is an ill return for the pro-  
 tection that has been constantly afforded them by the  
 British nation. <sup>1</sup>

The opposition which the English encountered on the  
 part of the people themselves, was naturally created by the  
 course which the English pursued. They professed, that  
 they were to retain the government of the country only  
 during the war. After one or two years, the business and  
 the power would again be consigned to the Nabob when  
 those who during that interval had acted agreeably to his  
 inclinations would be favoured; those who had conformed  
 to the inclinations of the English collectors, therefore,  
 continued far below the amount to which a perma-  
 nent arrangement might have been expected to bring  
 them.

Hypocrisy was the cause which produced the difficulties  
 resulting to the English from their connexion with the  
 Nabob. They desired to hold him up to the world, as an  
 independent Prince, their ally when it was necessary they  
 should act as his lord and master. If they succeeded in  
 persuading no other person that he was an independent  
 Prince, they succeeded in persuading himself. And very  
 naturally on every occasion, he opposed the most strenu-  
 ous resistance to every scheme of theirs, which had the  
 appearance of invading his authority. If the defence of  
 the country rested with the English and if they found

that to govern it through the agency of the Nabob deprived them of its resources, and above all inflicted the most grievous oppression upon the inhabitants, results, the whole of which might have been easily foreseen, without waiting for the bitter fruits of a long experience, they ought from the beginning, if the real substance, not the false colours of the case, are taken for the ground of our decision, to have made the Nabob in appearance, what he had always been in reality, a pensioner of the Company. What may be said in defence of the Company, is, that parliament scanned their actions with so much ignorance, as to make them often afraid to pursue their own views of utility, and rather take another course, which would save them from the hostile operation of vulgar prejudices

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#### CHAPTER IV

*Cornwallis takes the Command — Second Campaign begins — Siege of Bangalore — March to Seringapatam — Operations of the Bombay Army — Battle at Arikera between Cornwallis and Tippoo — Army in Distress for Bullocks and Provisions — Obligated to return — Operations of the Mahratta Contingent — Negotiations with Tippoo — Debate in the House of Commons on the War with Tippoo — Preparations for a third Campaign — Reduction of the Fortresses which commanded the Passes into the Carnatic, and threatened the Communications — Operations of the Nizam's Army, and of the Mahratta Contingent, in the interval between the first and second March upon Seringapatam. — Operations of the Bombay Army. — Operations of Tippoo — March to Seringapatam — Intrenched Camp of the Enemy stormed before Seringapatam — Preparations for the Siege — Negotiations — Peace. — Subsequent Arrangements*

WHEN the breach with Tippoo first appeared inevitable, the Governor-General formed the design of proceeding to the coast, and of taking upon himself the conduct of the war. He resigned that intention, upon learning that General Meadows was appointed Governor of Fort St George. But he resumed it, when the success of the first

BOOK VI. already in the greatest distress for grain, of which a  
 CHAP. IV. quantity had been destroyed from want of ability to carry  
 it on.

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It had been planned that General Abercromby with the Bombay army should ascend the Ghauts from Malabar and penetrate to the centre of the Sultan's dominions, in co-operation with the main army from the east. With infinite labour that army had constructed roads, and carried a battering train, with a large supply of provisions and stores, over fifty miles of stupendous mountains "every separate gun being hoisted over a succession of ascents by ropes and tackle. They had reached Poodi cherrum by the first of March. But as Lord Cornwallis was not yet ready to advance, he transmitted instructions to that General to halt and only after he returned to Bangalore, with the cavalry of the Nizam, sent him orders to advance to Perispattam, a place distant about three marches from Seringapatam.

When the army led by the Governor-General, arrived at Arikera, the river was already so full, as to render impracticable, or at any rate dangerous, his original plan of crossing at that place. Communication, however was necessary with the army of Abercromby; and he resolved to the ford of Canimbeddy eight miles above Seringapatam. The Sultan, in the mean time, not daring to leave his capital to strike a blow at the army descending from the west, and ashamed to let it be invested without a struggle, had mustered resolution for a battle. On the same day on which the English army arrived at Arikera, the enemy took up a strong position about six miles in their front. As the ground for the direct approach of the English army was unfavourable, being a narrow broken space between the river and a ridge of hills, the commander resolved, by a march, which he learned was practicable, to cross, during the night, the ridge of hills on the enemy's right, to turn his left flank before day-light, and gaining his rear cut off the retreat of the main body of his army to Seringapatam. A dreadful storm disconcerted this well-planned enterprise by rendering it impossible for the corps to find their way and proceed in the dark. Lord Cornwallis, however halting till dawn resolved to persevere, as he could not repeat his stratagem

after the enemy was apprized ; and expected some advantage, by forcing him to an action on other ground than that which he had deliberately chosen

“ Tippoo Sultaun did not decline the meeting , and the praise,” (says Colonel Wilks, who appears to have little pleasure in praising the Sultan, but great in imputing to him all the bad qualities which belong to the most despicable, as well as the most odious, of the human race), “ cannot, in justice, be denied to him on this occasion, of seeing his ground, and executing his movements, with a degree of promptitude and judgment, which would have been creditable to any officer” The loss of the English was chiefly sustained during the time necessary to form under the guns of the enemy For after they were in a condition to advance, the troops of Tippoo did not long maintain their ground , and were pursued till they found refuge under the works of Seringapatam

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So ill were the arrangements of the English taken for procuring intelligence, and so well those of Tippoo for intercepting it, that no information was possessed of General Abercromby, to open communication with whom, it was now resolved to march to Caniambaddy In this march, lengthened by a circuit to twenty miles, three days were consumed, exhibiting to the enemy, in the battering train, and almost every public cart in the army, dragged by the troops, “conclusive evidence,” says Colonel Wilks, “ of the utter failure of all the equipments of the English army” Not only were food and carriage wanting, but fatigue, with the rains, which were now almost incessant, and defective unwholesome food, had filled the camp with disease, in which, in addition to other horrors, the small-pox raged with uncommon violence

Such, in the mind of Lord Cornwallis, was the state of the faculties on which foresight depends, that, after he had brought the army to the extreme point of its line of operations, on the day after his arrival at Caniambaddy, when the official reports of the morning were presented to him, and not before, did he discover, that all this misery, all this loss of lives, and all this enormous expense, were to no purpose, that he could not attempt a single operation, that he must destroy the whole of the battering train, and heavy equipments, and lose no time

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no contemptible battle in their own defence. The practice comes down from a remote antiquity and marks that unsettled and barbarous state of society when merchants are obliged to depend upon themselves for the means of their defence. The experienced utility of their services has procured them considerable privileges. They are regarded as neutral in all wars; they enjoy a right of transit through all countries and the armies, which spare nothing else, act under a species of obligation, seldom violated, of respecting the property of the Brinjarries. One of the officers of the Company Captain Alexander Read, well acquainted with the language and customs of the natives, suggested to the Commander-in-Chief the expedient of availing himself of the extensive resources of the Brinjarries. It was resolved, in consequence that encouragement should be held out to them, to resort with their cargoes to the English camp. Captain Read was employed to circulate intelligence and before the arrival of the army he had collected more than ten thousand bullock-loads of grain.

For the supply of bullocks, nearly forty thousand of which had been lost in the last campaign, Lord Cornwallis, beside the contractors, employed agents to purchase them on the part of the government, and directed the same to be done at Madras. As a relief to the exigencies of this department, he also made an agreement with the officers, to carry and provide their own tents for a monthly allowance, during the remainder of the war and a similar arrangement with the officers commanding battalions of sepoye, for the tents of their corps, and the carriage of their ammunition and stores. Upon the arrival of the army at Bangalore, it was found that success had attended those exertions, and that 100 elephants from Bengal had arrived at Velore.

The army had the further satisfaction of learning that Gunjootah, which had been for some time besieged by the Nizam's troops, including the British detachment, surrendered on the 12th of June, and had given a valuable country to that ally.

The intelligence also from Europe was exhilarating to an army keen for the continuance of the war. On the 22nd of December 180, Mr Hippeley in the House of

Commons, had called in question the justice and policy of the war, had affirmed that the Raja of Travancore was the aggressor, by his lines on the Cochin territory, and his purchase from the Dutch, that the Mahrattas were the people from whom in India the greatest danger impended over the interests of England, and that the Mysore sovereign was valuable as a balancing power, that the resources and genius of Tippoo rendered a war against him an undertaking of no common difficulty and hazard, and that the finances of the Company, feeble and exhausted as they were acknowledged to be, could ill endure the burden of an expensive war. Mr Francis and Mr Fox repeated and enforced the same considerations.

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On the 28th of February, Mr Hippley renewed the discussion, when the alliance concluded with the Nizam and Mahrattas, afforded a new topic. He complained that, in those treaties, though made ostensibly on account of the attack on Travancore, the Raja was not mentioned. The cause, however, of the Raja was included in that of the English, and the interposition of such a people as the Mahrattas and the Nizam, in any shape, between the English and their allies, was incapable on almost any occasion of conducing to good, far from incapable on many occasions of conducing to evil.

Mr Fox assailed the alliance in a tone of vehement reprobation. He denounced it a plundering confederacy for the purpose of extirpating a lawful Prince. He said, that when the progress of civilization had rendered men ashamed of offensive alliances in Europe, we had signalized our virtue by renewing them in India. He described the family compact of the House of Bourbon, as the last of those odious leagues which had disgraced the policy of civilized Europe. As soon as a better order of things in France arose, it dissolved, he said, that wretched engagement, and put an end, he hoped for ever, to those expedients of wicked governments in a barbarous age.

In reply to these accusations, circumstances were presented to show; that the war in the first place was defensive, in the next place necessary to deter an insatiable enemy from perpetual encroachments, and lastly, politic, as affording every prospect of a favourable termination. And on the 22nd of March, Mr Dundas moved

BOOK VI. great chasm, into two parts at the top, on each of which  
 CHAP. IV. was erected a citadel the one affording a secure retreat,  
 ——— though the other were taken ; and by that means doubling  
 1791. the labour of reduction.

Lieutenant-Colonel Stuart, employed during the first campaign in reducing Dindegul and Palacatcherry was destined to command at the siege of Savendroog. On the 10th of December he encamped within three miles of that side of the rock from which it was proposed to carry on the attack while the Commander-in-Chief made that disposition of the rest of the army which seemed best adapted to cover the besiegers, and secure the convoy.

The first labour was immense, that of cutting a way through the powerful jungle, and transporting heavy guns over the rocks and hills which intervened.

The closeness of the surrounding hills and woods had rendered this fortress as remarkable for its noxious atmosphere as its strength. Its name signified literally the rock of death. And the Sultan congratulated his army upon the siege at which one half, he said, of the English army would be destroyed by sickness, the other by the sword. The confidence of the garrison in the strength of the place had this good effect, that it made them regard the approach of the besiegers as of little importance and they were allowed to erect their batteries without any further opposition than the fire of the fort.

Within three days after the opening of the batteries the breach was practicable. The jungle was now of advantage ; for growing close up to the very wall, the troops were able to scramble up unseen, by the crevices and rugged parts of the rock, and made a lodgement within twenty yards of the breach. The 21st of December was the day chosen for the assault and Lord Cornwallis and General Meadows arrived to witness the terrible scene. The grenadiers of the 52nd, and flank companies of the 76th regiment, led by Captain Gage, were to gain the eastern summit. Captain Monson, with the light company of the 52nd, was to scour the works on the western ; the flank companies of the 71st, under Captains Lindsey and Robertson, were to engage whatever works or parties might be found in the chasm between ; the 52nd and 72nd regiments to follow the flank companies ; and parties,





BOOK VI. to the commandant to fall back to Palacatcherry if a  
 CHAP IV powerful enemy should appear. The party who were now  
 1791. sent against Coimbatore appeared not to Lieutenant Chalmers sufficiently formidable to remove him from his post. After a siege, however of some duration, a breach was made, and on the 11th of July the enemy attempted to storm. It was with great difficulty that order was preserved among the Travancore troops but the zeal of their French commander ably seconded the exertions of the Lieutenant, and the enemy were repulsed with great slaughter. Major Cuppage, who advanced with expedition from Palacatcherry completed their discomfiture, taking the two guns with which they had breached the fort, and pursuing them till they crossed the Bowani.

At the time of this transaction, the Sultan, with his army had made a movement towards the north, with the intention, as was at first supposed, of proceeding against Purneram Bhow, in the province of Chittledroog. This alarmed Cornwallis so much, that he thought it necessary to make a few marches in the same direction, for the purpose of recalling the hostile army. But Tippoo, having covered a large convoy which he expected from Bednore having routed, by a detachment, a corps of the army of Purneram Bhow left by that chief, on his route to Serah, for the purpose of masking Mudgerry and having terrified into flight the garrison thrown by the Mahrattas at the same time into Great Ballipoor returned to the neighbourhood of his capital. As soon as there, he despatched Kummer ud Deen Khan, his second in command, into Coimbatore. Beside the army which this General led into Coimbatore, a light party chiefly horse, proceeded with him till after he descended the Gujelhutty pass, and then crossing the Cavery proceeded through the Tapoor pass and with great secrecy and despatch, conducted a new Kelledar with a reinforcement, to Kistnagherry the only place of importance which Tippoo now possessed, between Bangalore and the Carnatic. This service performed, they remained to ravage the country; and threatened interruption to the British convoys.

The Khan arrived before Coimbatore, towards the end of October with a force, of which the estimate, at 500 regular cavalry, 8000 regular infantry and fourteen pieces



right and the left were to take possession of the posts which defended the enemy's flanks and the front divisions of all the three columns, after carrying what was immediately opposed to them, were to cross with the fugitives, and endeavour to get possession of the batteries on the island. So early an attack, before the junction of the Bombay army and during the darkness of the night, was probably unexpected by Tippoo. The allies, to whom the plan of the attack was not communicated, till after the columns had marched, were in the greatest consternation. To attack with a handful of infantry and without cannon, the whole of Tippoo's army in a fortified camp under the walls of his capital, appeared to them an extraordinary attempt. And their surprise was increased, when told that Lord Cornwallis in person commanded the division which was to penetrate the centre of the enemy's camp and had gone to fight, as they expressed it, like a private soldier.

When the columns were on the march, the camp was struck, and the baggage packed the corps of artillery and the quarter and rear guards of the line, stood to their guns and arms while the reserve, consisting of the cavalry and the 7th brigade, were drawn up in front of the camp, to act as occasion might require, or to pass a night of the keenest anxiety.

Between ten and eleven o'clock the centre column touched upon the enemy's grand guard, who were escorting a party of rocket-men for the annoyance during the night of the English camp. The horsemen galloped back to the line; but the men with the rockets remained, and endeavoured by discharging them to harass the march. At the time when the rocketing began, the left division were ascending the Carighaut hill, which soon became illumined with the discharge of musquetry. The centre column (the men, as soon as discovered, lengthening the step, though silence was not broken by a single voice, and in one minute moving at double the former pace) gained the hedge, and entered the enemy's lines, about fifteen minutes after the return of the horsemen had communicated to the enemy the alarm. The right division, which had a more difficult march, and was misguided to a point more distant than was intended, entered the bound-hedge

about half-past eleven, when the discharge of cannon and musquetry, showed that the rest of the troops had every where closed with the enemy

BOOK VI.  
CHAP IV

1792

Of the centre column, 3700 firelocks, the front corps had for its primary object to pass into the island with the fugitives the corps in the centre was first to clear the right of the camp, and next, if possible, to gain the island ; while that in the rear was to form a reserve under Lord Cornwallis, in a position where he might support the other two, and wait the co-operation of the columns on his right and left The head of the column penetrated the hedge, under a heavy but ill-directed fire, both of cannon and musquetry , and as it advanced, the enemy gave way. The leading companies, the Captains of which had been instructed to charge themselves, each particularly with the men of his own command, and, in getting to the fort, to regard the celerity more than the solidity of their movement, pushed their way directly to the river Amid the entanglements of the rice-fields, and the darkness and hurry of the night, the front companies separated into two bodies The party which first reached the ford, crossed without opposition under the very walls of the fort Captain Lindsay pushed into the sortie in hopes of entering the gate with the fugitives , but it had been shut immediately before, and the bridge drawn up The second party reached the same ford, about five minutes after the first had gained the opposite side The passage was now more difficult, for the ford was choked up by the crowds of the enemy pressing into the island No resistance was, however, attempted, and though some guns were discharged from the fort, they were not directed to the ford. The first party marched across the island, and took post near the southern side Colonel Knox, who commanded the second, proceeded towards the eastern angle of the island, near which there was a pettah, or town, called Shaher Ganjam, with lines and batteries towards the river commanding the eastern ford The pettah was hardly carried, when a firing began from the batteries on the river It indicated that the troops on the left had penetrated the enemy's camp, and, it might be, were forcing their way into the island. The Colonel despatched the greater part of his corps to take these

BOOK VI. This was the last of the enemy's attempts. The redoubt  
 CHAP IV was a scene of carnage. Two officers, and nineteen privates, lay dead upon the ground three officers and twenty-two privates, grievously wounded, were perishing for assistance; and the rest were nearly exhausted with want and fatigue. About four in the afternoon, the fire from the rocks began to slacken, and the enemy withdrew.

1792.

The battle every where seemed now to be given up. The enemy however was only preparing for his attack on the troops in the island. A considerable force advanced, about five o'clock, which was without much difficulty repulsed. But the English received information, that a desperate attempt would be made to drive them from the island during the night. They made their dispositions for defence and the troops lay upon their arms in anxious expectation of the assault but the morning dawned without an alarm.

In the preceding evening, Lord Cornwallis issued, in the shape of general orders, a flattering compliment to the army and seldom has a tribute of applause been more richly deserved. The plan of the attack has the character of good sense upon the face of it, and is stamped with the approbation of military men while it is evident to all, that the conduct of the army in its execution, whether intellect or bravery be considered, was such as it would not be easy to surpass. The only point of failure regarded, as usual, the article of intelligence. The localities of the quarter against which General Medows was directed, were ill understood and hence arose his defect of success.

The total of killed, wounded, and missing, according to the returns of the British army was 535. The loss of the enemy was estimated at 4000 slain; but the desertions were the principal cause of his diminution of force. His troops were withdrawn from the redoubts on the north side of the river during the night of the 7th and on the morning of the 8th, the remains of his army were collected, the infantry within the works of the fort, the cavalry and baggage on the south side of the river towards Mysore.

Arrangements were now made and executed for besieging

ing the fort Three European regiments, seven battalions of sepoys, a captain's command of artillery, were established in the island, and occupied the position taken originally by Colonel Stuart, in front of the Sultan's gardens While the fort occupied the western extremity of the island, and, with its works, comprehended the space of a mile, the Sultan's new palace and gardens covered a similar extent at the eastern extremity Previous to the war, the space between these gardens and the fort was occupied by the houses and streets of the most flourishing capital, at that time, in the dominions of any native prince in India. With the exception of the pettah, or suburb, already mentioned, which constituted the eastern extremity of the town, the rest had all been destroyed, to make room for the batteries of the island, and to form an esplanade to the fort The gardens in which the Sultan delighted, laid out in shady walks of large cypress trees, and enriched with all the vegetable treasures of the East, were cut to pieces and destroyed, to furnish materials for the siege, while the gorgeous palace adjoining, was converted into a hospital for the sick

BOOK VI  
CHAP IV  
1792.

On the evening of the 8th, Tippoo sent for Lieutenants Chalmers and Nash, whom he had retained in contempt of the capitulation of Coimbatore They found him sitting under the fly of a small tent, on the south glacis of the fort, very plainly dressed, and with a small number of attendants He gave them presents, and charged them with letters to Lord Cornwallis, on the subject of peace, which, he gave them assurance, he had never ceased to desire Contrary to the usual custom of Tippoo, their confinement had not been cruel

At day-break on the 10th, the cavalry of Tippoo, who had crossed the river about six miles below the island, got round undiscovered to the rear of the left wing of the English camp, and, advancing between the position of the English, and that of the Hyderabad army, were taken by the English piquets and rear guards for a part of the confederate troops On passing the park of artillery, they asked some of the camp followers for the *Burra Sahib*, or commander, who, supposing they meant the officer of artillery, pointed to his tent They galloped towards it immediately, drawing their sabres but receiving the fire

BOOK VI. on the south, to the confines of the Bednore country on  
 CHAP. IV the north. Periapatam was in former times the capital.  
 ——— But after the growth of the Mysore power the Rajs had  
 1792. lived at Mercara, a place more protected by the moun-  
 tains, about twenty miles north from the Poodicherrum  
 pass.

The Coorgs are considered as related to the Nairs, that singular caste, of high pretensions to rank, on the coast of Malabar. Their country placed at a medium elevation, between the sultry plains and the tempestuous tops of the mountains, enjoyed a temperate and delightful climate, with a fertile soil. Hyder laboured for its subjugation in vain, till a dispute about the succession arose between two brothers. Upon usurping the government of the country Hyder confined the royal family in the fort of Cuddoor on the eastern frontier of Bednore. Tippoo removed them to Periapatam, on the eastern side of the woods of Coorg. A son of the Raja, then dead, made his escape from Periapatam in 1788.

The discontented and inflexible spirit of the Coorgs, and the cruelty with which they had been treated, had rendered the country a scene of devastation and bloodshed. Upon the appearance among them of their native Prince, they renounced with enthusiasm their obedience to the Sultan, and defeated a detachment of his army descending with a convoy to the western coast. Before the commencement of the war between the English and Tippoo, the Raja had repaired to Tellicherry to form, if possible, a connexion with the English, of whose sentiments with regard to the Sultan he was sufficiently apprized. A regard to the existing treaty made him unable to obtain their consent, at that time, to the engagements which he was desirous of contracting. But no sooner had the war broken out, than he offered his services; and, though his country

The story is told somewhat differently by Colonel WELLS and by Major DIXON. Major DIXON says, that the interference of Hyder between the brothers being admitted, he destroyed the family of the elder brother, carried that of the younger to Seringapatam, and took possession of the country. In the year 1764, the son of that brother made his escape. He had been prisoner in Seringapatam from his infancy. It was part of the policy or policy of Tippoo, to make converts to his religion; and that by force as well as persuasion. The occasion was not seized in the case of the young Raja. He was subjected to the painful rite of the Mussulman religion, and enrolled among the Chelms, or corps of slaves; of whom he had, though strictly guarded, the nominal command of a battalion, at the time of his escape.

was miserably drained both of men and resources, he was able, by his intelligence and activity, to aid materially the operations of the Bombay army. The circumstances in which he had been placed by misfortunes had broken many of the fetters which bind the understandings of his countrymen, and he manifested an enlargement of mind seldom witnessed among those matchless slaves of prejudice. Not only had trials invigorated his faculties, but he displayed a generosity, and a heroism, worthy of a more civilized state of society.

BOOK VI.

CHAP. II.

1792

Lord Cornwallis included his country by name, in the territory which Tippoo was called upon to resign. The proposal, it seems, excited his astonishment and rage. He had destined the Raja, no doubt, for a conspicuous example of the direful consequences of renouncing his allegiance. The territory of the Raja commanded the best approach to his capital from the sea. And he complained, not without reason, that to demand a territory which approached to his very capital, and was not contiguous to the country of any of the allies, was a real infringement of the preliminary articles.<sup>1</sup> Lord Cornwallis, having enjoyed the advantages of the Raja's rebellion, was determined not to leave him at the mercy of his foe. The vakeels of the Sultan returned to the English camp with a declaration that their master refused to see them, or to deliberate on the point. Lord Cornwallis ordered preparations for resuming the siege. The guns were sent back to the island and the redoubts, and the working parties resumed their labours. The army of Purseram Bhow, having at last joined Cornwallis, was sent across the Caverry, to assist General Abercromby in completing the investment of the fort, and exceeded the intentions of the British commander, by plundering the country. The princes were informed of the necessity which had arrived of removing them to the Carnatic. Their guard was disarmed, and treated as prisoners of war. The princes were actually, next morning, on the march to Bangalore, not a little affected with the change of their situation, when Lord Cornwallis, at the urgent request

<sup>1</sup> The words of the article were, "One half of the dominions of which Tippoo Sultan was possessed before the war, to be ceded to the allies, from the countries adjacent, according to their situation."



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BOOK V

CHAP. IV

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BOOK VI. British power held up between them and the Nizam, whom  
 CHAP. IV they had long destined for their prey

1793

While the armies were before Seringapatam, and the Sultan was yet unsubdued, Mahdajee Sindiah marched towards Poonah with an army and not only alarmed Nana Furnavsee who governed in the name of the Peshwa, and whose authority Sindiah wished to usurp, but was regarded with suspicion by the English themselves.

When the English, before the war were bidding so high for alliances against Tippoo, Sindiah, too, offered his services to sale but asked an exorbitant price. He required that two battalions of the British troops should join his army as an auxiliary force, in the same manner as the armies of the Nizam and Peshwa that the English government should engage to protect his dominions in the upper provinces during his absence and should become bound to assist him in the reduction of the Rajpoot Princes, who resisted the extension of his conquests. To involve themselves in war in the distant provinces of Hindustan, for the aggrandizement of Sindiah, whose power was already an object of alarm, by no means accorded with the policy of the English and the alliance of Sindiah was not obtained.

Upon the conclusion of the peace with Tippoo, a proposition was made to the British commander by Hurry Punt that the service of the British troops with the army of the Peshwa should be rendered permanent, in the same manner as that of the corps which was attached to the army of the Nizam. It was the opinion of Lord Cornwallis, that this subsidiary force, though asked under the pretext that it would only be employed in enabling the Peshwa to reduce to obedience any of his refractory dependants, was really desired as a weapon against Mahdajee Sindiah, whose power endangered the authority of the minister at Poonah. But though Lord Cornwallis could not fail to be sensible of the extraordinary increase of the power of Sindiah, who had established the dominion given him, by the policy of Mr Hastings, over the Mogul provinces, and employed in his own favour the remaining authority of his imperial captive, while he had formed a large and formidable corps of regular infantry under European officers, mostly French, and erected foundries and



BOOK VI. Mogul administration. The shares varied according as the  
 CHAP V land was recently or anciently brought under culture, and  
 1780 according to the pressure sustained by the state. Two  
 fifths to the cultivator and three to the government, have  
 been assumed as the average proportions for land under  
 full cultivation.

Every year to ascertain the produce of every field, and collect from it the share which belonged to the government, was a very laborious and complicated process and some variety occurred in the modes in which the operation was performed. In the petty Hindu governments, it would appear that the agents of the prince transacted immediately with the husbandmen called ryots, either man by man, or village by village.

The establishment of villages (a vicinity or parish, would, perhaps, be the more appropriate title) is a peculiarity in India, of which, having been already explained, it is only necessary here to excite the recollection. Each vicinity call it village, or call it parish, constituted a little community which had a species of government within itself. Of the villagers, one was headman, distin-

By the Committee on Indian affairs in 1816, Fifth Report, p. 16.  
*История.*

Detailed descriptions of the constitution of the village communities, as they exist in the South and West of India, are to be found in different authorities. Wilks, South of India, I. 117. Briggs on the Land Tax of India. Duff's History of the Marhattas, I. 31. Sykes on Land Tenures in the Dekkan. Colonel Briggs has ascertained also, that vestiges more or less complete of the same system, are to be found in Bengal and Hindustan. In the Upper Provinces the system of village property was found entire, less they came into the British possession, and the Revenue settlements have recognised the principle. E. India Records, Revenue, I. 418. Much valuable light has been also thrown upon the system as it exists at Axtongurh, on the borders of Oude. Report on Axtongurh by Mr Thomson J. Esq. Bengal, 1840. They had suffered great disorganisation in Malwa, but speedily resumed their form when tranquillity was secured. Malcolm's Central India, II. 22. The author remarks—“We may after the scenes which they (the village institutions) have survived in Central India, presume them to be indestructible, unless the hand of power be actually exerted to put an end to an establishment which has for ages formed the basis of all Indian governments. Ibid. II. 4. It is evident, that the existence and rights of village communities or townships are not known or suspected at the time of Lord Cornwallis's regulations, and though it is true they had suffered much injury in Bengal, yet there were indications of their existence; and it is remarkable that the undoubted industry and talent which was engaged in the investigation of the state of landed property amongst the natives of India, should have missed so curious a peculiarity. It is proof of the extreme difficulty which then prevailed of procuring accurate information; and our inquirers in fact are unable to avail themselves of the sources best entitled to reliance. They could not discourse with the people—they did not live amongst them—they derived such information as they with prodigious labour and most commendable exertions, were able to collect through the medium of the Persian language and the functionaries of the Mohammedan Government. It is, also, however an exemplification of our

guished in different places by different appellations, another was employed to keep and register the accounts of the community. Each community had also its Brahmens, as well for the service of the gods, as for the education of the children. It was provided, too, with the various species of handicrafts, and labourers, required by the habits of the people. The land of the village was sometimes divided into lots, and was regarded as individual property, but sometimes it belonged to the community as a whole, and a separate partition of it was made every year by the villagers among themselves, each ryot receiving for the cultivation of the year, such a portion as appeared to correspond with his capital or means. In this, as in other transactions, the headman was the great regulator, but rather, it should seem, from the habitual deference which was paid to him, than any power which he had to enforce his decrees. When the revenue agents of the government transacted village by village, without descending to the annual assessment of each individual ryot, they levied a particular sum upon each particular village, and left the villagers to settle the individual quotas among themselves.

When the Mogul government extended itself so enormously as to comprehend the greater part of the vast Indian continent, the greatness of its transactions, and the rudeness of its mind, naturally rendered it impatient of details, and modes were invented of transacting the business of revenue more in the gross. The revenue agents were rendered stationary, in the districts where they collected, and became responsible to the government for the revenue, receiving payment, by a per centage, or share of what they collected. Under the Indian governments, Moslem or Hindu, every thing which was enjoyed, whether office or possession, had a tendency to become hereditary. There was a great convenience in preserving, in each district, the same grand agent of revenue, and after himself, his son or successor, because each was better acquainted with the people and resources of the district, than, generally speaking, any other man could be expected

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liability to overlook that which is unfamiliar to our own preconceptions, and different from all to which we have been accustomed. We suspect not the existence of that, for the appreciation of which we have no standard ready.—W

BOOK VI. to be. In this manner, the situation of those agents  
 CHAP. V became in fact hereditary and the government of the  
 1786. Moguls, which was, though occasionally violent, in many  
 respects considerate and humane, seldom allowed itself  
 to displace those officers, without some heavy ground of  
 displeasure even when it sometimes superseded them in  
 the business of collection, it generally made them an  
 allowance, to preserve their families from want or degrada-  
 tion. Before the period of the English acquisitions, the  
 Persian appellation of Zemindar had been generally appro-  
 priated to them, in the northern regions of India.

Being responsible to government for the revenue, they  
 were allowed the exercise of all the powers which, in the  
 rude government of the Moguls, were accounted necessary  
 for realising it. The common method in India of enforcing  
 payment of any debt, was the use of coercion in the  
 hand of the creditor. For revenue-debts government was  
 not likely to pursue more lenient methods. A military  
 force was the instrument allowed and the Zemindars, in  
 the common style of Oriental pride, retained about them  
 as many troops as they could possibly find the means of  
 maintaining. Under Eastern despotisms the different  
 powers of government were seldom communicated asunder.  
 To the power of collecting the revenue by a military force,

The term means literally land-holder; the nature of the office has been  
 unnecessarily perplexed by the use of the term sometimes in its literal, some-  
 times in its conventional sense, or by an actual combination of functions.  
 Under the native village system, several villages were formed into district,  
 and besides headman of each village, there was headman of the district.  
 He was probably at first nominated by the villagers, and was one of their ex-  
 body being proprietor of a share of the common land. Subsequently he  
 may have been nominated by the Government, on whose behalf he collected  
 its dues, receiving as an equivalent, per centage upon the collections. But  
 besides this fee, and whether he had land of his own or not, he received from  
 the villagers subsistence allowance in the form of grant of land. Now as the  
 office, as the text remarks, very commonly became hereditary the Kan-kar or  
 subsistence-land, became hereditary succession, and thus either with or  
 without proprietary estate derivable from share in the township, invested  
 the headman of district with the character of land-holder independently  
 of and not inconsistently with, his office of collector of revenue. He was,  
 therefore, not merely an officer of the Government. He was, at the same  
 time, the representative of the people, and in that capacity holder of certain  
 land. It was, consequently possible to deprive him of his government office, as  
 was done repeatedly in the time of Hastings, without destroying his character  
 of Zemindar. He was still the head of the district on behalf of the people, and  
 enjoyed his own land, or that attached to his peculiar office, although he had  
 no longer any thing to do with the collection of the revenue. At the same  
 time his continuance in his Zemindari did not constitute him proprietor of the  
 soil beyond his subsistence-land, or such share or shares as might have come  
 down to him from an original member of the township. Briggs on the Land  
 Tax. Malcolm's Central India, II. 9.—W

was added the power of administering justice All civil disputes appear to have been regarded in India as falling naturally under the cognizance of the agents of revenue And, in fact, the whole business of judicature and police, with the sole exception of inflicting the highest class of punishments, devolved upon Zemindars, each within the district over which he was placed<sup>1</sup>

"We generally," says an intelligent servant of the Company, speaking of himself and his brethren, "see Indian affairs with English eyes, and carry European notions into Indian practice"<sup>2</sup> To this source may evidently be traced a considerable proportion of the blunders of our countrymen in the government of India For how long a period, and as yet hardly closed, did they resolve upon finding a feudal system in India? With this turn of mind, it was to be expected, that they would, if possible, find a set of land-holders, gentry, and nobles, to correspond with those in England. The Zemindar had some of the attributes which belong to a landowner he collected the rents of a particular district, he governed the cultivators of that district, lived in comparative splendour, and his son succeeded him when he died The Zemindars, therefore, it was inferred without delay, were the proprietors of the soil, the landed nobility and gentry of India<sup>3</sup> It was

<sup>1</sup> This statement is not quite correct. As head of the district, the Zemindar in common with the headmen of the villages, was responsible for the police, and maintained a civil force to preserve peace, protect property, and collect the revenues, but he was never officially armed with judicial or military authority. The expounder of the law was the Pundit or Maulavi, or Cazi. The military commander was the Foujdar. Some of the more considerable Zemindars took advantage of the distracted state of the empire to raise troops, and assume the attitude of military chiefs, but this was no part of their proper functions — W

<sup>2</sup> Mr Thackeray, in his Report on the comparative Advantages and Disadvantages of the Ryotwar and Zemindary settlements, dated 4th August, 1807, Fifth Report, *ut supra*, App 31 p 990

<sup>3</sup> It can scarcely be said with justice, that this inference was drawn without delay. The subject had received repeated attention. A Letter from the Committee of Revenue, of March 1786, cited in Harrington's Analysis, iii 252, observes, that "the discussion of the rights of the Zemindar has employed for years past the first talents both in India and Europe." The most rash and uncompromising advocate of the doctrine was Francis, and he maintained the proprietary rights of the Zemindars with equal pertinacity in his place in Parliament. Sixth Report, Appendix, p 915, 937. Hastings never admitted it, and in opposition to Francis's opinions, a committee was appointed by Hastings to investigate the nature of landed tenures in Bengal. The report of this committee, submitted in 1778, authorizes no inference in favour of the proprietary rights of the Zemindars. "Almost all the lands, it is said, are held under some person who collects the rents, pays a revenue and stands between the Government and the immediate tenant of the soil, whether the land be considered as belonging to Government, or the property of the person under



BOOK VI. not considered that the Zamindars, though they collected the rents, did not keep them; but paid them all away with a small deduction, to the government. It was not considered that if they governed the ryots, and in many respects exercised over them despotic power they did not govern them as tenants of theirs, holding their lands either at will or by contract under them. The possession of the ryot was an hereditary possession; from which it was unlawful for the Zamindar to displace him. For every farthing which the Zamindar drew from the ryot he was bound to account. And it was only by fraud, if, out of all that he collected, he retained an *ans* more than the small proportion which, as pay for collection, he was permitted to receive. Three parties shared in the produce of the soil. That party to any useful purpose most properly deserves the name of proprietor to whom the principal share of the produce for ever belongs. To him who derives the smallest share of the produce the title of owner least of all belongs. In India, to the sovereign the profit of the land may be said to have wholly belonged. The ryot obtained a mere subsistence, not more than the necessary wages of his labour. The Zamindar enjoyed allowances to the amount of about ten per cent. upon the revenue which he collected, not more than a compensation for his services. To the government belonged more than one-half of the gross produce of the soil.

The English were actuated not only by an enlightened, but a very generous policy when they resolved to create, in favour of individuals, a permanent property in the soil, as conducive at once to the increase of its produce, and the happiness of the people. They were under the influence of prejudices in the mode of carrying their design into execution. Full of the aristocratical ideas of modern Europe, the aristocratical person now at the head of the

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where it is held, or of him by whom it is accepted and cultivated, it is still subject to some superior who possesses rights and claims over it, the extent of which we presume not to examine. But whatever these rights may be, the land itself is liable to the Government revenue and whoever possesses it, holds it on this special condition. *Harrington's Analysis. Revenue, §. 62.* For a summary sketch of the discussions in Bengal, in which Mr Grant, Sir J. Shore, Mr Law and writer under the signature of Agriculture, were the principal disputants, see *British India Analyzed, §. 418.—W*

This is even the language of English law. "By a grant of the profits of the land," say the English lawyers, "the whole land itself descends. For what is the land but the profits thereof?"

government, avowed his intention of establishing an autocracy upon the European model, and he was well aware that the union, at home of statesmen and Directors, whom he obeyed, was under the influence of similar propensities

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1789

In agreement with the orders from home, the resolution was, to form a settlement with the Zemindars for the revenues of their several districts, to limit the settlement in the first instance, to a term of ten years, but to render it permanent, if sanctioned by the authorities in England, and to recognise the Zemindars as hereditary proprietors of the soil, upon payment, as a land-tax, not to be enhanced, of the sum at present assessed

To such a degree were the English, up to that hour, unacquainted with the country, that the most instructed among them differed prodigiously in estimating the revenue which Bengal was competent to yield. Some were of opinion that the existing rate of assessment was heavier than the people could bear. Others conceived that it was far below the amount to which it might, with propriety, be raised. The government, after all its inquiries, had no better foundation on which to place the magnificent structure it intended to raise, than the amount of the actual collections of preceding years, upon the average or medium of a few of which the assessment, destined for perpetuity, was now arranged. The authorities at home dissuaded, or rather forbade, an actual measurement and valuation of the country, and made a remark which, in itself, does them credit, whatever may be thought of its application to the occasion on which it was produced: that an assessment below what the country could bear, was no detriment, in the long run, to the government itself, because the riches of the people were the riches of the state.

It was easy for the government to assume that the Zemindars were proprietors of the soil under the Mogul sceptre, and it was easy to declare that they should be so in future. But it was not easy to reconcile these proceedings with the rights of other classes of the people. Under the Mogul system, there were various descriptions of persons, as *Talookdars*, *Chowdries*, *Munduls*, *Mokud-*

BOOK VI. *ch. vi.* who, as well as Zemindars, had hereditary claims  
 CHAP. V upon the produce of the soil and it was not the intention  
 1782. of government to sacrifice to any class of its subjects the  
 interests of any other. But the interests of the ryots,  
 which were of many times the importance of the interests  
 of all the other classes taken together whether the mass of  
 individual happiness, or the power of the state, be re-  
 garded as the end, were by far the most difficult to bring  
 into a state of concordance with the rights which were  
 thus to be conferred upon the Zemindars.

The possessions of the ryots, either individually or by  
 villages, were hereditary possessions. So long as they  
 continued to pay to government the due proportion of the  
 produce, they could not lawfully be dispossessed. They  
 not only transmitted their possessions by descent but  
 had the power of alienation, and could either sell them, or  
 give them away. At an early period of the Mogul history

The three last were different designations of the same functionary—head  
 men of villages or districts. The Tahak-dar was holder of land by different  
 tenure—as grants from Government, from Zemindar by purchase, inheritance,  
 &c., but usually paying his land-tax to Government direct.—W

This statement is too comprehensive, and is therefore incorrect; and it is of  
 importance to correct the misapprehension of the term, as it leads to practical errors.  
 The ryot, as synonymous with the actual cultivator is not necessarily the pro-  
 prietor of the soil. Proprietary right depends upon an individual being  
 member of the family or corporation by which at some indefinite period the  
 village lands were held in common. In all parts of India these persons are  
 found in various relations to the soil. They may cultivate their own shares or  
 shares, in which case alone they combine the characters of proprietor and ryot.  
 They may have let their land, and in that case they may have let it to a ryot  
 inhabiting the same village, or to one inhabiting another village. They may  
 have actually sold their land; in which case they cannot of course be con-  
 sidered as proprietors; but they still are to be regarded as members of the vil-  
 lage community and in that capacity, as having votes in the settlement of  
 the revenue to be paid to the state, the purchasers of their lands having no  
 such corporate authority. For it is clear that the qualification of being  
 member of the village proprietary, member of the common house of the  
 community is not dependent upon the land, but upon descent. The legislators  
 of the community are hereditary, and they cannot transfer by sale or appoint-  
 ment, their privileges, which birth alone confers. They are the heirs of the  
 first occupants and settlers in their character of rulers—not of cultivators; and  
 this principle of organization chiefly illustrates the history of these establish-  
 ments. They have originated in conquest, or it may be termed Colonization,  
 but it has been the forcible colonization of an occupied country thinly  
 occupied, perhaps, rudely cultivated no doubt, but there have been in-  
 habitants who in some instances may have been destroyed, but who in  
 others were reduced to state of serfage. The immigrants, more civilized and  
 more powerful, have partitioned the lands amongst distinct families or frater-  
 nities, who have held certain districts in common as proprietors and rulers.  
 The members of the families have subdivided the lands, but not the sove-  
 reignty. As they multiplied, the lands were still more divided, or were dis-  
 posed of to meet the wants of the occupants; but the authority over the whole  
 could not be communicated to persons of other birth and other castes, and the  
 hereditary right depending on birth was indefeasible, although after long  
 period the possession of such right might be the only record of community.

a minute survey had been made of the land, upon that survey an assessment had been founded, which had long been regarded as the standard of what every field was to pay, even when new imposts, during the progressive difficulties and corruption of the Mogul administration, were superadded, the Zemindars were bound to give written schedules, called *pottahs*, to the ryots, specifying the particulars of the assessment upon each individual, and these documents were registered in the government accounts, and intended for the protection of the ryot against the extortion of the collector

The means which, under the Mogul sceptre, were provided for the security of the ryots, were very inadequate to their end. The Zemindars were enabled to exercise universal oppression. Under the eye of a humane and vigilant governor, they were occasionally restrained, by the terror of summary punishment, from the excesses of exaction. But, in general, they took from the ryots every thing beyond what was necessary to preserve them in existence, and every now and then desolated whole districts by the weight of their oppressions. This was contrary to the laws under which the Zemindar was appointed to act. But to whom was the ignorant, the timid, the credulous, the indigent ryot, to apply for redress? His fears, and very often his experience, taught him, that to suffer in patience was the prudent course. The exactions of the Zemindars were covered with so many ingenious contrivances, that they puzzled the wits of the simple cultivator, and often eluded the eye of the government itself.

If the aristocracy was provided for, it appears to have been thought, as by English aristocrats it is apt to be thought, that every thing else would provide for itself. The rules by which the payments of the ryots were determined varied in various places, and so intricate did they

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origin. Now, although it is no doubt true that the principle of village organization is very ancient, yet it is not necessary that all the instances should pretend to high antiquity. The contrary is known to be the case, and both Colonel Sykes and Mr Thomason specify instances, where within the last two or three centuries the village municipality has either been exterminated or become extinct, and lands and powers have passed to other associations. The organization, has, however, been preserved, and is now intelligible. See Briggs, Sykes, Thomason, also Malcolm's Malwa, and Elphinstone's Report on Poona.—W

BOOK VI. of the natives depended solely upon the character of the  
 CHAP. V. individual who was sent to govern them. Where the  
 1789 collector was a man of humanity and justice, the people, as under the worst government on earth, would no doubt be protected. But as often as it should happen that the collector was a man of another character the people were exposed to the greatest injustice. If the collector was oppressive, he himself was his own judge. If he decided iniquitously where lay the appeal? To another class of revenue officers, whose feelings could not be regarded as impartial to the Board of Revenue, as Sadder Dewannee Adaulut a tribunal at such a distance that few indeed of the natives could endure the expense of an appeal. It was therefore resolved that the financial and judicial functions should be disjoined and the following reasons for that important measure were published to the country "That while the collectors of the revenue preside in the courts of Mihal Adaulut as judges, and an appeal lies from their decisions to the Board of Revenue, and from the decrees of that Board to the Governor-General in Council in the revenue department the proprietors can never consider the privileges which have been conferred upon them as secure. That exclusive of the objections arising to these courts, from their irregular summary and often *ex parte* proceedings, and from the collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties it is obvious that, if the regulations for assessing and collecting the public revenue are infringed, the revenue officers themselves must be the aggressors and that individuals who have been aggrieved by them in one capacity can never hope to obtain redress from them in another. That their financial occupations equally disqualify them from administering the laws between the proprietors of land and their tenants. That other security must, therefore, be given to landed property, and to the rights attached to it, before the desired improvements in agriculture can be expected to be effected."

With a view to improve upon this plan of administering justice, Lord Cornwallis devised and established the following scheme. In each district, that is, in the language

<sup>1</sup> Preamble to Regulation II. of 1793.

of the country, each Zillah, and in each of the considerable towns or cities, a Zillah, or City Court, was established. One of the Company's servants, higher in rank than the collector, was the judge. To this judge was appointed a registrar, and one or more assistants from among the junior servants of the Company. Each court was provided with a native, duly qualified to expound the Hindu or Mohammedan law, in cases which turned upon any of these several codes. And all descriptions of persons within the local administration of the tribunal, except British subjects amenable to the Supreme Court, were rendered subject to its jurisdiction.

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1793

To obviate the danger of arrears in decision, from the arrival of too many causes to decide, the judge was authorized to refer to his registrar, under an appeal to himself, all suits in which the litigated property was not of considerable amount. The jurisdiction of the registrar was extended at first to 200 rupees, and afterwards even to sums of a higher amount. For determining, in suits regarding personal property, from the value of 50 rupees downwards, native commissioners were appointed, and of these tribunals several at convenient distances, were established in every Zillah. They were allowed no salary or establishment, but received as remuneration a fee of one *ana* per *rupee*, or a commission of somewhat more than six per cent., upon all sums litigated before them. They acted the part of arbitrators, and their mode of procedure was summary, that of simple rational inquiry, not distorted into a labyrinth by technical forms. From their decision an appeal might be carried to the Zillah Court. And upon these appeals, as well as those from the jurisdiction of the registrar, the decision of the Zillah Court was final, excepting in one set of cases, namely, those regarding the species of property called in English law *real* property, and of those cases in only that part in which the decision of the inferior court was reversed.

Such was the establishment for primary jurisdiction, or decision in the first instance in the civil department of judicature. A new provision was also devised for the second and ultimate decision, in case of appeal. The Board of Revenue, or the Governor-General in Council, had previously exercised the powers of appellate jurisdic-

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ideal condition of the people. It is always a favourable sign of a government to provide for its own information respecting the error of its own proceedings, and the means of carrying on to perfection what is yet mingled with defect. To require periodical reports from the judges, for the purpose of making known the evils which remained without a remedy is a measure deserving no common tribute of applause. Were a similar operation carried over the whole field of government, and made sufficiently faithful and searching, the melioration of governments, and with it the happiness of the human race, would proceed with an accelerated pace. One consideration, however which it is of great importance to hold constantly in view has been well suggested on this very occasion by the Committee of the House of Commons, appointed to report on the affairs of India in 1810. "It is hardly" they say "to be supposed that public servants, in such a case, would lean to the unfavourable side or without sufficient foundation, transmit accounts which would prove disagreeable to the governed to receive. A communication of this nature might be rather suspected of painting things in colours pleasing to the government, with the view of bringing the writer into favourable notice." <sup>1</sup> It is a matter of experience, that this propensity in general, is uncommonly strong. A wise government therefore would always take, with very considerable allowance, the flattering picture presented in the reports it might receive but in the language of the same Committee, would regard them as worthy of particular consideration, as often as defects are stated to exist, and evils are represented to prevail. How opposite the ordinary conduct of governments, how effectual the measures which they take to hear no accounts but flattering ones, to discountenance and deter the suggestion of defects, the world is too old to need to be informed.

Such was the apparatus provided by Lord Cornwallis for the administration of law. A correspondent consideration ought to have been, what was the law which through this machinery was to be administered.

When rights are considered as already established, the object of a body of law is to define and secure them

<sup>1</sup> Fifth Report, p. 63

<sup>2</sup> *Ibid.*

Among the people of India rights to a great extent were already established, and there were two systems of law which respected them. It was an important question to what degree those systems were calculated to answer the purposes of law, that is, to mark out, by clear, precise, and unambiguous definitions, what were rights, and what the violations of them. It was a very lame and defective provision for the distribution of justice, to appoint a number of persons for the administration of law, if there was no law, or no tolerably good law, for them to administer. The standards of Hindu and Moslem law, by which, respectively, the rights of the Hindu and Mohammedan population were to be governed, were their sacred books the Shasters and the Khoran. These were just about as well calculated for defining the rights of the people of England.<sup>1</sup> There was, by consequence, in India, nothing which in reality deserved the name of law. Its place was supplied by the opinions of the Pundits and Cauzees, which were liable to all the fluctuations, which diversity of thoughts, and the operation of interest, were calculated to produce. Every thing was vague, every thing uncertain, and, by consequence, every thing arbitrary. The few points which could be regarded as in any degree determinate and fixed, covered a very small portion of the field of law. In all the rest, the judges and interpreters were at liberty to do what they pleased, that is, to gratify their own interests and passions, at the expense of the candidates for justice to as great a degree, as the ignorance or negligence of the ruling power would permit. With the law, in such a condition as this, it is evident, that any thing like a tolerable administration of justice was altogether impossible. The first thing, therefore, first in point both of order and importance, was, to have prepared a set of exact definitions, comprehending rights, and those violations of them which it is the business of law to prohibit. In other words, it was proper to have drawn up a clear and unambiguous

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<sup>1</sup> The errors of our author upon these subjects have been already pointed out. The standards of Hindu and Mohammedan law are, in a very restricted acceptation, their sacred books. The word Shaster is of very wide and vague signification, and, as here employed, has no meaning at all. The social institutions of the Hindus are based upon the Vedus, but their laws are laid down in a variety of works written upon the subject. In like manner the standards of Mohammedan law are numerous and comprehensive, and are very slightly dependent upon the Koran.—W



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1790

payment from the ryots. Under the observance of many tedious forms, the decisions of the courts were so slow that in the space of two years the accumulation of undecided causes threatened to arrest the course of justice. In one district alone, that of Burdwan, the suits pending before the judge exceeded thirty thousand and it appeared by computation upon the established space of the court, that no candidate for justice could expect to obtain a decision during the ordinary period of his life.

The collector of Burdwan stated the matter correctly in reporting to government the following complaint of the Raja who "submits it," he says, to your consideration, whether or no it can be possible for him to discharge his engagements to government, with that punctuality which the regulations require, unless he be armed with powers, as prompt to enforce payment from his renters, as government had been pleased to authorize the use of, in regard to its claims on him and he seems to think it must have proceeded from an oversight, rather than from any just and avowed principle, that there should have been established two modes of judicial process, under the same government the one, summary and efficient, for the satisfaction of its own claims the other tardy and uncertain, in regard to the satisfaction of the claims due to its subjects more especially in a case like the present, where ability to discharge the one demand necessarily depends on the other demand being previously realized.

The effects of this system upon the minds, as well as upon the condition of the Zemindars, cannot be doubtful. In answer to an inquiry of government in 1802, the collector of Midnapore said. All the Zemindars with whom I have ever had any communication in this, and in other districts, have but one sentiment, respecting the rules at present in force for the collection of the public revenue. They all say that such a harsh and oppressive system was never before resorted to in this country that the custom of imprisoning landowners for arrears of revenue, was, in comparison, mild and indulgent to them that, though it was no doubt the intention of government to confer an important benefit on them by abolishing this

Letter from the Collector of Burdwan to the Board of Revenue dated 8th January 1794; Fifth Report, at supra, p. 26, and App. No. 8.

custom, it has been found, by melancholy experience, that the system of sales and attachments, which has been substituted for it, has, in the course of a very few years, reduced most of the great Zemindars in Bengal to distress and beggary, and produced a greater change in the landed property of Bengal, than has, perhaps, ever happened in the same space of time, in any age or country, by the mere effect of internal regulations"<sup>1</sup>

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"The great men formerly," says Sir Henry Strachey, "were the Mussulman rulers, whose places we have taken, and the Hindu Zemindars. These two classes are now ruined and destroyed"<sup>2</sup>

We have thus seen the effects of the new system upon the Zemindars. Let us next endeavour to trace its effects upon a much more important class of men, the ryots. Unfortunately, for this more interesting part of the inquiry, we have much more scanty materials. In the documents which have been exhibited, the situation of the ryots is in a great measure overlooked. And it is from incidental circumstances, and collateral confessions, that we are enabled to form a judgment of their condition. This result itself is, perhaps, a ground for a pretty decisive inference, for if the situation of the ryots had been prosperous, we should have had it celebrated in the loftiest terms, as a decisive proof, which surely it would have been, of the wisdom and virtues of our Indian government.

When it was urged upon Lord Cornwallis, by Mr Shore, and others, that the ryots were left in a great measure at the mercy of the Zemindars, who had always been oppressors, he replied, that the permanency of the landed property would cure all those defects, because, "where the landlord has a permanent property in the soil, it will be worth his while to encourage his tenants, who hold his farm in lease, to improve that property." It has already been shown how inapplicable this reasoning was to the case which it regarded. It now appears that the permanency, from which Lord Cornwallis so fondly expected beneficial results, had no existence, that the plan which he had established for giving permanency to the property

<sup>1</sup> Fifth Report, p. 60

<sup>2</sup> Answer to Interrogatories, 30th Jan 1802. Ibid p. 536

BOOK VI. once, as a position admitting of no doubt, that these favourable sales afford a substantial proof of the lightness of the assessment, and of the flourishing state of the country "1

1793.

The important subject of judicature, or the effects of the regulations contrived for the dispensation of justice, next call for our attention.

The Committee of the House of Commons remark, that so inadequate was the provision for judicature to a population of 27 000,000 when the collectors alone were the

Nothing is more remarkable than the propensity of all sorts of persons connected with the Indian government, to infer from anything, or everything, "the flourishing state of the country." Here is one instance of the curious premises from which the inference is apt to be drawn. The man who explores, with any degree of attention, the documents of Indian history, will be at no loss for others. Another is adduced by Mr Henry Strachey as the same occasion, and its insufficiency pointed out. To those who are tolerably well acquainted with the internal state of the country it is known, says he, "that the population unless checked by some great calamity constantly increases very fast. Increasing cultivation necessarily follows population. The want of courts of justice, of regular system of police, prevents not the prosperity of the provinces subject to the Mahrattas. Where no battles are fought, where the ryots remain unmolested by military exactions, where the Zemindar or his agent are seldom changed, the lands of the Mahrattas, in the neighbourhood of this district (Miknapore) are in high state of cultivation and the population is equal, frequently superior to ours. From the circumstance of increasing population alone, we cannot, as many pretend, draw an inference of very high prosperity and good government." In fact, where marriage at the earliest marriageable age is religious duty of the strongest obligation, and to die without having seen the greatest of misfortunes, nothing but extreme misery can prevent the rapid increase of population; and when a vast quantity of good land still remains to be cultivated, nothing can be the cause of such misery but bad government. I imagine, continues the same enlightened observer "that the population has increased, solely in consequence of our system of internal administration, appears to me most erroneous. Under the native government, the population had reached its utmost height, or very near it. Thirty years ago, nearly half the people were swept away by the greatest famine recorded in history. Ever since that period, except in 1796 when partial famine happened, the numbers have been gradually increasing. I do not know that the increase has been more rapid, during the last ten years, than during the twenty preceding although most of the abuses of the native governments, and many new abuses of our government, prevailed throughout the greater part of the last-mentioned period. Supposing the country to enjoy peace, I cannot easily conceive internal mismanagement so extensive, as to stop the increase of population. See for these, and the quotations in the text, Answer to Interrogatories in 1802, Fifth Report, at supra, p. 330—332.

1 The Committee complain that they still remain in the dark respecting this important article of knowledge; and that the estimates formed by the best informed of the Company's servants, betrayed, by their discrepancy ignorance so pretence of the field of inquiry. The first estimate, upon the acquisition of the Deccan, made the population of the three provinces, Bengal, Bahar and Orissa, 16,800,000. By Sir William Jones it was computed to be 24,000,000, Mr Colebrooke made it 20,000,000. The Committee take the medium between the conjectures of Jones and Colebrooke, and call it 27,000,000. Report, at supra, p. 321.—21.

The Committee allude to the returns called for by Lord Wellesley, in 1801 although they attach no credit to the results. From comparison with other inquiries, since made, they appear to have erred chiefly in being under rated.

judges, that the people, among themselves, must have settled the greater number of their disputes, "by modes peculiar to their tribes or castes, or by reference to their *gooroos*, or spiritual guides," that it was the object, on the other hand, of Lord Cornwallis, to afford the means of a regular judicial decision, in every case, to every inhabitant of the country, "without any impediment from the distance the complainant would have to travel for redress," an object so essential undoubtedly to goodness of government, that it is the principal end of its institution

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It soon appeared, however, that the provision made for this important business was ill adapted to its end. The tedious forms through which the judges had to travel, permitted them to decide so small a number of causes in a given portion of time, and the delay and uncertainty which attended a technical and intricate mode of procedure, afforded so much encouragement to dishonest litigation, that the pace of decision fell prodigiously behind that of the multiplication of suits, and the path of justice might, in some places, be regarded as completely blocked up.

A more melancholy exhibition of the weakness of the human mind, arising from the wretched nurture which it still receives, cannot easily be discovered or conceived, than that which appears in the proceeding we are next to relate.

To obviate the disproportion which was found to exist between the number of judicial decisions and the occasions for them, two rational expedients presented themselves. One was to disencumber the Courts of every operation not essential to the ends of justice, by which means they might have been enabled to get through with a much greater number of causes. If, even by the most expeditious mode of procedure, the Courts were unable to decide as many causes as were brought to them, the case was plain the number of courts was too small for the business.

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The population of Bengal and Bahar, according to Hamilton, is above thirty-six millions, and that of Benares three millions. The population of Orissa is estimated by Stirling at 1 296,000 exclusive of the hill tribes, whose numbers could not be ascertained.—V

BOOK VI. the government resolved on instituting, where necessary  
 CHAP. VI. the office of an assistant Judge on extending the jurisdiction of the native commissioners and on allowing a more expeditious mode of procedure in sums of a small amount. "Subsequent reports," say the Select Committee of the House of Commons, "are not calculated to show that the difficulty of keeping down the number of cases, depending on the file, has at all diminished or that the means resorted to for that purpose, have been as successful as was expected. And they quote a despatch, of a date so late as March, 1812, in which the Directors express themselves in the following extraordinary terms. We should be very sorry that, from the accumulation of such arrears, there should ever be room to raise a question, whether it were better to leave the natives to their own arbitrary and precipitate tribunals, than to harass their feelings and injure their property by an endless procrastination of their suits, under the pretence of more deliberate justice."

Of the extent to which they are harassed, and the evils which so defective a system of judicature produces, some conception may be attained by the following quotation from a report of one of the Judges of circuit. "The commitments for breaches of the peace, arising from boundary disputes, and other contests concerning landed property are ascribed to the great, though unavoidable arrear of untried causes pending in some of the courts since by necessarily protracting, for years, the decision of suits, it frequently drove the suitors to despair and induced them to run the risk of taking justice into their own hands, by seizing the object in dispute, rather than to await the tardy issue of a process, which threatened to exceed the probable duration of their own lives."

The Court of Directors appear in that despatch of theirs which has been recently quoted, to imagine that the choice lies exclusively between the present institution, of which the evils are so enormous, and the arbitrary and precipitate system of the natives. A slight degree of reflection, exempt from the shackles tied upon their minds by custom and authority would point out to them another course,

See for the above quotations, the Fifth Report, at supra, p. 63, 64.  
 \* Ibid. p. 64.

infinitely preferable to both Let them give to the people distinct definitions of their rights in an accurate code, and give them courts of justice, which will decide not precipitately, but carefully, free, however, from technical impediments, and therefore quickly, and they will both enable their courts to investigate a greater number of causes, and will exceedingly reduce the number of suits

BOOK VI

CHAP VI

1793

It is the admirable effect of an excellent administration of justice, that it prevents the very intention to commit injury, by making it certain to every one that injustice will be disappointed of its aim Who would go into court for a decision, aware that his cause was bad, if he knew that its merits would be accurately explored, and justice immediately awarded? In this case, the minutest portion of benefit could not be expected from iniquitous litigation Iniquitous litigation, therefore, would cease And after the deduction of suits instituted or provoked for purposes of injustice, very few in comparison would remain. But the case is altogether different, when a man knows that it will be months, or perhaps years before his injustice will come in turn for investigation, that even then, it is only ceremonies that are to be performed, for a considerable space of time, will the merits of the question remain unexplored, that the law is unwritten, arbitrary and obscure, that the procedure is exceedingly difficult to follow without mistakes, and that on these mistakes, totally regardless of the merits of the question, the decision may finally depend The advantages of injustice, in a state of things like this, are so very numerous, and the encouragement to unjust litigation so very great, that the multiplication of suits may be regarded as a natural and unavoidable result

No proposition, derived from political experience, may be relied on more confidently than this That the multiplication of law-suits is a proof of the bad administration of justice that a perfect administration of justice would almost annihilate litigation and that the attempt to reduce it by any other means, such as that of expense, is to hold out encouragement to plunderers, and to deny protection of law to the honest and just

When any great public duty is to be performed, and the number of performers is found to be too small for the de-

BOOK VI. subornation of perjury practised for the most atrocious  
 CHAP. VI. purposes are," say the Select Committee, not unfre-  
 1793. quent in many parts of the country but the Bengal pro-  
 vinces appear to be, more than any other, characterized  
 by them.

Sir Henry Strachey says, "Since the year 1793, crimes of all kinds are increased and I think most crimes are still increasing. The present increase of crimes may, perhaps, be doubtful but no one, I think, can deny that immediately after 1793, during five or six years, it was most manifest and rapid and that no considerable diminution has taken place."

The Judge of circuit in the Bareilly division, in 1805, warns the government against supposing that the *Hats* transmitted from the courts exhibit an accurate view of the state of delinquency because the cases are extremely numerous which are never brought before the magistrates, from the negligence or connivance of the police officers, and the aversion of the people to draw upon themselves the burden of a prosecution. Hence it happens that the less aggravated cases of robbery with those of theft and fraud, are frequently perpetrated, and no records of them remain." Hence the cases of homicide, which least admit of concealment, occupy the largest space in the criminal calendar. The number of persons," continues the Judge, "convicted of wilful murder is certainly great.—The murder of children, for the sake of their ornaments, is, I am sorry to say common. So much so, that I submit whether it might not be advisable to strike at the root of the evil, by taking away if possible, the temptation to commit the act. I mean, adopting measures to prevent children from wearing gold and silver ornaments. For my own part, being convinced that, under the existing laws, we have no other means of putting an end to the frequent perpetration of this crime, I could wish to see the practice of adorning children with valuable trinkets, altogether prohibited. He adds, A want of tenderness and regard for life, is very general, I think, throughout the country."

In Sir Henry Strachey's paper of answers to interroga-

<sup>1</sup> Fifth Report, p. 86.

Answer to Interrogatories, Fifth Report, p. 332.

Fifth Report, p. 367, 368.

tories, from which we have derived so much important information, he says, "Perjury has increased greatly, and is increasing" <sup>1</sup> In the report of the circuit Judge of the Patna division in 1802, it is stated, that "of the murders charged (at his late jail delivery) only a few, and of the robberies no more than one, really happened The rest are merely fictitious crimes, brought forward to harass an opposing litigant, or revenge a quarrel. The criminal court is the weapon of revenge, to which the natives of this province resort, on all occasions Men of the first rank in society feel no compunction at mutually accusing each other of the most heinous offences, and supporting the prosecution with the most barefaced perjuries Nor does the detection of their falsehood create a blush" <sup>2</sup>

BOOK VI  
CHAP VI.  
1798.

Such a prevalence of the higher crimes implies a complete dissolution of morals To this also, if it could remain doubtful, the same weight of testimonial evidence is applied. Sir Henry Strachey says, "The people are probably somewhat more licentious than formerly Chicanery, subornation, fraud, and perjury, are certainly more common Drunkenness, prostitution, indecorum, profligacy of manners, must increase under a system which, although it professes to administer the Mohammedan law, does not punish those immoralities"

In having lessened the quantity of direct oppression which superiors exercised, as a sort of right, over inferiors, consisted, in the opinion of this judge, the whole of the benefit introduced by the English laws And this, again, he thought, was counterbalanced by the loss of that protection which the superior was accustomed to yield to his dependants and by exposure to the still more dreadful scourge of dacoits, and other depredators and destroyers <sup>3</sup>

The Judge and magistrate of Burdwan, in his answer to interrogatories in 1802, says, I am sorry that of the moral character of the inhabitants, I cannot report favourably, or give it, as my opinion, that the British system has tended to improve either the Mohammedan or Hindu moral character Certain it is, that much profligacy, vice, and depravity, are to be found amongst the higher class

<sup>1</sup> Fifth Report, p 544

<sup>2</sup> Ib p 68

<sup>3</sup> Ib p 527



BOOK VI in a general neglect of duty in petty rogueries, in a want  
 CHAP VI. of respectability in being destitute of that energy and  
 activity and that delicate sensibility to character, which  
 1793. ought to characterize a police officer. In the duties of his  
 office, a darogah is hardly occupied half an hour a day  
 and he often becomes negligent, indolent, and, in the end,  
 corrupt. His dishonesty consists in taking bribes from  
 poor people who have petty foudarry suits, in conniving  
 at the absconding of persons summoned through him, in  
 harassing ryots with threats, or pretended complaints,  
 creating vexatious delays in settling disputes, or prevent-  
 ing their being settled, and chiefly in deceiving the poor  
 and ignorant, with whom he has to deal. The avowed  
 allowances of a police darogah are not sufficiently liberal  
 to render the office worthy the acceptance of men who are  
 fit to perform the duty.

The secretary of government says "The darogahs of  
 police seldom, if ever, possess any previous instruction as  
 to the nature and extent of their duties, nor any habits of  
 life calculated to enable them to perform those duties  
 with effect. A brahmin, a sirdar a moonshee, or even a  
 menial servant, is, each in his turn, a candidate for this  
 situation, of their fitness for which it is easy to judge.  
 Their agency even in furnishing information, a duty which  
 requires no particular exertions or capacity is totally in-  
 effectual. Happy however would it be, if the defects  
 already noticed were the greatest to be found in the  
 character of the police darogahs. The vices, which render  
 them a pest to the country are, their avarice, and addic-  
 tion to every species of extortion."

The description of the following scene of iniquity in  
 which the police agents are the principal actors, is neces-  
 sary to convey a just idea of the state of this branch of  
 the government. The judge of circuit, in the Calcutta  
 division in 1810, in a paper addressed to the Judge and  
 magistrate of the Zillah, says, "The practice, so nefarious  
 and so prevalent, of extorting and fabricating confessions,  
 requires your most serious attention. I remarked, with  
 much concern, that, in every case of dacoity brought

Fifth Report, p. 320.

Mr Dowdeswell's Report on the Police of Bengal, in 1819, 1844, p. 611  
 612.

before me, the proof rested on a written confession, given in evidence at the trial, and regret to add, that all those confessions bear the marks of fabrication. In one of these cases (No 7 of your calendar), a prisoner, who was perfectly innocent, confirmed before the magistrate, under the influence of improper means previously made use of towards him, a confession before a police darogah, which was proved on the trial to be false and which had, in fact, been extorted by intimidation and violence. An erroneous idea prevails, that a confession is the strongest proof of guilt. This false notion, perhaps, first gave rise to the custom of fabricating them, and the practice appears to have increased, till it has become general and systematic. It would be endless entering into a detail of the different modes in which confessions are fabricated and proved. The usual course appears to be the first, to apprehend as many people as caprice may dictate, and then to select from the number those individuals who are to confess, and determine on the purport of their confessions. The preliminaries being thus arranged the victims are made over to the subordinate agents or instruments of police, to be dealt with according to circumstances, and the rest are discharged. It sometimes happens that they meet with a man whom they are able to deceive, by assurances of immediate pardon, and false promises of future favour and indulgence. In such case, he is usually told, that by signing a paper, prepared by the buckshee for that purpose, or repeating before witnesses what he is instructed to say, he will not only escape hanging, or, at least, perpetual imprisonment, but become one of the chosen of the police, and make his fortune as a goyendah, that all he has to do, is to pretend that he was concerned in the dacoity, and say, that the gang was composed of particular individuals who are named to him, and leave the rest to the darogah. In short, the alternative is offered him, either of making a friend or an enemy of the police, either of suffering ignominious death through their power, or of raising himself to a post of honourable ambition and profit by their favour. When these means fail, they have recourse to compulsion. In this event, the prisoners are taken out singly, at night, and subjected to every species of maltreatment, till they consent to sub-

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BOOK VI. with which he is regarded by those among whom he lives,  
 CHAP VI. that without some share of their good opinion, life itself  
 1793. becomes a burden. In India, there is no moral character. Sympathy and antipathy are distributed by religious, not by moral judgment. If a man is of a certain caste, and has committed no transgression of those ceremonies by which religious defilement or degradation is incurred, he experiences little change in the sentiments of his countrymen, on account of moral purity or pollution. In employing the natives of India, the government can, therefore, never reckon upon good conduct, except when it has made provision for the immediate detection and punishment of the offender.

The proneness of the natives to mendacity and perjury renders the evidence of judicial facts in India so weak and doubtful, as extremely to increase the difficulties of judication. The intelligent Judge of Circuit, in the Rajshahye division, in 1808 thus describes the state of evidence in the Indian courts. "Every day's experience, and reflection on the nature of our courts, and the minds and manners of the natives, serve to increase my doubts about our capacity to discover truth among them. It appears to me, that there is a great deal of perjury, of many different shades, in [our judicial proceedings] and that many common rules of evidence would here be inapplicable and absurd. Even the honest men, as well as the rogues are perjured. The most simple, and the most cunning, alike, make assertions that are incredible, or that are certainly false. If the prosecutor, in cases of dacoity were always to be disbelieved because there was perjury scarce a dacoit would be convicted. By cross-examination, you may draw an honest witness into as many absurdities and contradictions as you please.<sup>1</sup> It is not easy to detect the persons who come forward as eye-witnesses, in cases of dacoity. Their story is all true—but one point the identity of the persons whom they accuse and how can you discover whether this is true or false? Some witnesses are loquacious, some taciturn; some frigid, some over zealous some willing, some unwilling; some bold,

<sup>1</sup> This is not restricted to India, although it may happen more frequently than in England, through the greater timidity and shyness of the witnesses. Such perjurication is not to be confounded with wilful falsehood.—W

some timid, some scrupulous some come to give false evidence in favour of a friend or master, some to ruin an enemy, and the signs of the different modes that disguise truth are so very equivocal, and often so unintelligible, that nothing can be depended on. There is not one witness in a dozen on whom you can rely for a purely true story. It has very often happened, that a story, which, by attending only to the plain direct course of things, I believed to be true, has, by examining into matters apparently connected in a very distant degree with the case, turned out to be entirely false. I am afraid that the evidence of witnesses in our courts is, for the most part, an instrument in the hands of men and not an independent, untouched source of truth"<sup>1</sup>

"In the course of trials," says Sir Henry Strachey, "the guilty very often, according to the best of my observation escape conviction. Sometimes, an atrocious robbery or murder is sworn to, and in all appearance clearly established by the evidence on the part of the prosecutors, but when we come to the defence, an *alibi* is set up, and though we are inclined to disbelieve it, if two or three witnesses swear constantly to such *alibi*, and elude every attempt to catch them in prevarication or contradiction, we are thrown into doubt, and the prisoners escape. Very frequently the witnesses on the part of the prosecution swear to facts in themselves utterly incredible, for the purpose of fully convicting the accused when, if they had simply stated what they saw and knew their testimony would have been sufficient"<sup>2</sup>

In another place he declares, "A rich man can seldom

<sup>1</sup> Fifth Report p 589 —M

Very much that has been mistaken for falsehood and perjury by English judges, has been little else than their own ignorance—they have not understood the character of the natives with whom they have had to deal—have made no allowance for the circumstances of their situation, and although not wholly unacquainted with the language, have not understood it sufficiently to appreciate its phraseology. The impatience, too, which is commonly characteristic of the juvenile Indian judge, is very unfavourable to the elicitation of truth from a native witness. See, upon this subject, the remarks of Sir H. Strachey, quoted in a subsequent page. There is also another source of exaggeration, if not of error, in these opinions of the Indian Judges, which has not been sufficiently adverted to—their whole experience is confined to India; they have no standard of comparison—they could they preside at the Old Bailey for a session, they would probably discover, that very much of that which they deprecate, is not peculiarly Indian, but characterizes fraud and crime in all times and in all countries —W

<sup>2</sup> Fifth Report, p 561

BOOK VI. every body else does namely the protection given them  
 CHAP VI. by the Zemindars and police officers, and other people of  
 1789 power and influence in the country Every thing I see,  
 and hear and read on this subject, serves to convince me  
 of the truth of this statement. <sup>1</sup>

Sir Henry Strachey as usual, reasons with much intelligence upon this subject. "It is extremely difficult," he says, in his reply to the same interrogatory I may I believe, say it is not possible to arrange an effectual plan of association and co-operation, among the higher orders, for purposes of police, or for any other purpose We have few large towns no societies exercising or capable of exercising municipal authority

There are no gentlemen, in whose honour and probity in whose spirit and activity government can repose confidence. There exists not, between the common people and the rulers, a middle order, who feel a common interest in the prosperity of the state who love their countrymen, who respect their rulers, or are by them respected who either could, or if they could, would, even in a case of the greatest exigency exert themselves heartily and effectually each in his own sphere, for the public good. Such a set of men in the society is here unknown. Government is unable to direct, or in any way to make use of, the power of the individuals composing the community Hence our extreme ignorance of all that passes our complete inability to detect and apprehend offenders to explain to the public what we wish should be known and persuade them what should be done. Hence the long continuance of enormous abuses without its being possible for government, or for the magistrate, to prevent or to discover them.

It should," he says in another place, "be the study of government, in my opinion, to form, if possible, a body of gentry such as exists in other countries an intermediate order, between the governors and the governed, to whom the one might look down, and the other might look up. At present, no such order exists. Most of the men who once possessed rank and wealth, are gone to ruin. The men of property who do exist are, for the most part, such as have lately risen That the magistrate can maintain

the peace over a million or more of persons, without the help of a considerable number whose interest or sense of duty should induce them to assist him, is plainly impossible" <sup>1</sup>

BOOK VI  
CHAP. VI  
1701

The Judge of circuit in the Benares division, in 1808, descants with great warmth upon the same topic, the extreme difficulty of maintaining order in any country, without the assistance of a superior class of inhabitants incorporated with the people, and possessing that influence which superior property and education confer, over others deprived of those advantages. "In maintaining this opinion, I may," says he, "unless I greatly deceive myself, appeal to the general practice of almost all nations, originating, doubtless, in circumstances and feelings common to all mankind. The natural mode of managing men is to employ the agency of those, whom, from the relation in which they stand to them, they regard with respect and confidence. Accordingly, all governments seem to have made the authority of these native leaders the basis of their police, and any hired police establishment which they maintain are not intended to supersede the native police, but to superintend, watch, and aid its efforts. To take an example with which we are all familiar. In our own country we all know what services the society contributes to its own protection. We know how much vigour is conferred on its police, by the support which it receives from native gentry, from respectable landholders, from the corporations in towns, and from substantial persons of the middle classes in the villages. We can form some conception of the mischief which would ensue, if that support should be withdrawn, and an attempt made to compensate it by positive laws and artificial institutions."

Such is the extreme difficulty of distributing justice to a people without the aid of the people themselves! Such, at the same time, is the utter impracticability, under the present education, circumstances, and character, of the people of India, of deriving from them the aid which is required? Without a tolerable administration of justice, however, which the people of India are so far from enjoying, every man will acknowledge, that all attempts to improve either their circumstances or their character,

<sup>1</sup> Fifth Report, ut supra, p. 561

BOOK VI. peace but as to good morals, I am not aware, that, either  
 CHAP. VI. by precept or example, we are capable of producing any  
 ----- effect whatever. The vices and the crimes of the people  
 1783 proceed from their poverty and ignorance. And I do not  
 conceive they are likely to grow much richer or wiser  
 while the present state of things exists. This assertion,  
 however that the vices and crimes of the people proceed  
 from their poverty and ignorance, I would wish to be un-  
 derstood with limitations. Where considerable numbers  
 are collected and associate together—especially if there  
 happens to be much inequality of rank and fortune,—the  
 morals of the people are worst. the same may be observed  
 respecting such persons as have occasion to attend our  
 cutcherries they get into bad habits. It is not always,  
 therefore, that the people are the worst where they are  
 the poorest and most ignorant nevertheless, the assertion  
 is, in my opinion, generally speaking, true. It is certain  
 that where labour is amply rewarded, where all can easily  
 get employment, and where the poor are provided for the  
 people lead industrious and virtuous lives and it will be  
 observed that in remote parts, where debauchery and dis-  
 sipation are little known, very few except from necessity  
 resort to depredation on the public. Most, but not all,  
 dacoits begin their evil practices from necessity. A ryot,  
 finding some difficulty to subsist, either from his impru-  
 dence or ill fortune a peon, or other servant, losing his  
 place, and unable to procure another a cooly finding no  
 employment such persons, of whom in this populous  
 country there are always many thousands, often take to  
 stealing are corrupted by vicious companions drink  
 spirits and are gradually led on, from impunity and habits  
 of idleness, to become dacoits, and depend on robbery  
 alone for subsistence.”<sup>1</sup> This is an important passage  
 which will afford evidence for some interesting conclusions  
 in a subsequent page.

We have now seen the extent and dreadful nature of the  
 evil the inefficacy of the remedies which have been ap-  
 plied and the sort of despair entertained by the func-  
 tionaries of government that better can be found. That  
 there is no impossibility however in establishing a good  
 administration of justice, even in such a state of things as

<sup>1</sup> Fifth Report, p. 329.

exists in India, we may infer without much danger of mis- BOOK VI  
take, or even of contradiction<sup>1</sup> If much of the difficulty CHAP VI  
has arisen from the dominion of English prejudices, and  
especially that deep-rooted prejudice, that English law is  
the standard of perfection to which everything should be  
fitted, considerable progress towards improvement will be  
made, as soon as we have emancipated ourselves from  
those prejudices

1793.

In the first place, as the law, according to what we have already seen, is in a state in which it is to a great degree incapable of performing the offices of law, and must remain almost wholly impotent, in a situation in which the deficiencies of law are not supplied by manners, let the law be reformed, and put into that state in which alone it is adapted to answer the ends for which it is intended. Let the laws, whatever they may, for the security of existing rights or the attainment of future advantages, be determined to be, receive what alone can bestow upon them a fixed, or real existence, let them all be expressed in a written form of words, words, as precise and accurate as it is possible to make them, and let them be published in a book. This is what is understood by a code, without

<sup>1</sup> That there was no impossibility, nor even much difficulty in applying remedies to the evil, even when at its greatest height, has been proved by incontestable authority, the records of the Government, which show that the remedies were at hand when there was industry and skill to employ them. Amongst the districts most notorious for dacoity, prior to 1820, had been that of Burdwan. In that year Mr W B Bayley was appointed magistrate. In the following year, the Circuit Judge reported that gang-robbery had become nearly extinct in the district, and a regular system had been introduced, which promised fair to secure the co-operation of all parts of the community in the detection and apprehension of offenders. Upon being desired to explain the means by which such a change had been so rapidly effected, Mr Bayley reported, the principal of them to have been—the co-operation of the village watchmen, secured by rewarding them for activity, punishing them for neglect protecting them against encroachments upon their Chakerani lands—small apportionments of rent free land, by which their services were retained, and inducing the headmen of the villages to subscribe more liberally for the support of the Chowkedars. The Munduls, who were the principal fixed residents of each village, and who, as Mr Bayley states, were vested by long usage with considerable local authority and immunities, and the Chowkedars under them, were the chief classes upon which he deemed it requisite to call for particular assistance, both in furnishing information and active aid in the improvement of the police. "Judicial letter to Bengal, 9th Nov 1814. Papers relating to Police, from 1810 to 1819, printed for the House of Commons. The circumstances of Burdwan warrant the inference that it was not so much the character of the people, or the inadequacy of the law, as the inefficiency of the magistracy, which led to the prevalence of dacoity at particular times in the lower provinces of Bengal. It was comparatively rare in the upper provinces, and was not, as might be supposed from the remarks in the text, universal in the Company's territories.—W



BOOK VI. the vices of the law the complaints of the judges and  
 CHAP VI. other functionaries in India abundantly disclose. We  
 1792. learn that the great body of the people are excluded from  
 the courts of law by means of the expense that oppression reigns, because the people are unable to sue for redress that universal encouragement is given to one man to withhold from another what is his due, by the certainty of delay and the two chances, first of not being prosecuted, and secondly of baffling the plaintiff by the uncertainties of the law. We also learn that a wide field of impunity is ensured to every species of crime, the most atrocious not excepted first, because the people, upon whom the expense and trouble, arising out of the dilatory and costly proceedings of the courts, impose a burden greater than they are able to bear, fly from the duty of appearing as witnesses or prosecutors against delinquents secondly because delay produces the frequent destruction of evidence and, together with the uncertainties of an unwritten law and the complicated ceremonies of a superstitious mode of procedure, affords the greatest chance of escape. From the whole then of these evils to which is in a great measure to be ascribed the destructive anarchy which exists under the government of India from the whole, I say of that part of the mass of litigation which grows out of the vices of the law and all the evils with which both are attended, the reform of the law that is, an accurate code, an adequate judicial establishment, and a rational mode of procedure, would effect a complete deliverance.

No litigation would then remain, to prevent the effectual administration of justice, but that which would arise from the vices, intellectual or moral, of the people. The number of difficulties being greatly diminished, the power of coping with them would be greatly increased. It is also an important consideration, how much the vices of the people depend upon the vices of the laws, and how necessarily the vices of the people diminish, as the virtues of the laws are increased. Of this no man will doubt that the most effectual step which can be taken by any government to diminish the vices of the people is, to take away from the laws every imperfection by which the vices, to impart to them every perfection by which the virtues, of

the people may receive encouragement On a former occasion we have heard Lord Cornwallis declare, that the *prosperity* or *decline* of any people may always be referred to the laws, as their source<sup>1</sup> To the same copious fountain of all that is good, or all that is evil, with still greater certainty may then *vices* and *virtues* be traced

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The vices among the people of India which tend most to enfeeble the arm of justice, are two, their proneness to perjury, and their perfidy as agents of police the one rendering it extremely difficult to convict offenders upon satisfactory evidence, the other shielding them from detection and apprehension One would think it was not an effort beyond the reach of the human mind to find remedies of considerable efficacy for those diseases

First, in regard to perjury, the powers with which government in this, as in other cases, is capable of acting upon the human mind, are three, the power of instruction, the power of reward, and the power of punishment

On the subject of perjury, it appears, that the people stand peculiarly in need of instruction Under the native systems, legal or religious, particularly the Hindu, perjury was treated as a very trifling and venial offence The most effectual measures should be adopted to make them clearly comprehend, that there is no crime upon which the present government looks with more abhorrence, and that there is no quality which will be employed as a more certain mark to distinguish the objects of its favour and disfavour Effectual modes of communicating this knowledge would not be difficult to find It is observable, that wherever governments are in earnest about the communication of any article of knowledge to the people, they seldom remain destitute of means They are seldom baffled, we see, in communicating a complete knowledge of what they wish to be done by the people, how complicated soever it may be, in making payment of taxes It would be easy in India, for example, to print upon the receipt of taxes, or any other paper of general distribution, a short and clear description of the crime of perjury, with a notification, in the most impressive terms possible, of

<sup>1</sup> Vide supra, p 473

BOOK VI. observations are still to be made. As crimes have multiplied, increasing severity of punishment has been tried  
 CHAP VI. and the multiplication of crimes has not been diminished.  
 1793. Beside the general experience and arguments which prove the inefficacy of severe punishments for the repression of crime, peculiar reasons apply to the case of India. Under the infirmities which diminish the evidentiary force of almost all Indian testimony the cases are comparatively few in which the guilty can receive conviction on very satisfactory evidence. The feelings of no humane judge will permit him to inflict a cruel punishment, such as death, or anything approaching to death, when the evidence is not complete. His only alternative is, to acquit: the consequence is, that in a great proportion of cases, the guilty escape and crime receives that effectual encouragement, which uncertainty of punishment always affords.<sup>1</sup> For such a combination of circumstances as

Fifth Report, p. 563, 565, where we find the following excellent remarks, addressed by K. Sirachy Esq. one of the Moorshedabad Judges, to the Court of Muzumut Adalut, under date 19th August, 1806

"I must again entreat the attention of the Court to some suggestions with respect to the police, and to the operation of the more immediate causes of dacoity; and to consideration of the reasons, why the sanction of the criminal law is become inefficient in the way of example, and can no longer deter from the commission of crimes, or affect any criminals except those who, in justice, are not deserving of severe punishment.

"I consider it as out of the question, to improve the moral and religious principle of the people, by direct positive institutions. We are too ignorant of the natives to attempt anything so artificial without imminent risk. We do not understand the operation of such institutions on their minds, or their tendency with respect to the frame of the society. As for the criminal law I believe the impolicy and inefficacy even the mischief of very severe punishments, is generally acknowledged, as well as the injustice of inflicting punishment, where other remedies might have been used with equal effect. With respect to increasing the severity of the criminal laws, we have before our eyes an admirable example. In 1803, and again in 1806, this principle was expected to prove a remedy for dacoity. It has been tried, and it has utterly failed. As it is impossible to conceive a case more directly in point, or more full, ample, convincing proof of the insufficiency of the means to the end; I trust no increase in the severity of the criminal law will ever be again resorted to.

As punishments are more severe, stricter proof of the crime is required and consequently proportionally greater number of criminals escape conviction. Besides, the terror of the severe punishment makes the criminal more careful to guard against being taken; and as it has no tendency to increase the activity of the police, but the contrary the number of offenders apprehended will of course, be less than before. The dacoits now guard against the dangers of apprehension and conviction by corruption and terror. They would give more bribes, and commit more murders, if they thought more precaution necessary; and the consequence would be, that the difficulties of apprehending and convicting dacoits would increase, and people who had been robbed and tortured would still be compelled to perjure themselves that they might not be murdered.

<sup>1</sup> And with respect to the administration of the laws, are not the judges now intrusted with as much power as is proper? And if the law was made more

that which India presents to the hand of the legislator, BOOK VI.  
the rational course of expedients would undoubtedly be, CHAP VI  
to apply that lenity of punishment with which alone it is  
found that certainty can be combined, to prescribe no  
punishment which, upon strong presumption of guilt, the  
mind of a man would revolt provisionally to apply, to  
make use of no punishment the evil of which cannot be  
repaired, if the innocence of the prisoner should after-  
wards appear, and then to prescribe unsparing conviction  
as often as the balance of probability inclines to the side  
of guilt

1793

That admirable instrument for the application of all  
sorts of reparable punishments, and not only of reparable  
punishments, but what is infinitely better, of reformative  
punishments, punishments under the operation of which  
the restoration to society of hardly any offender would be  
an object of despair the Panopticon penitentiary house,  
invented and described by Mr Bentham, an organ of jus-  
tice so well adapted to the exigencies of every community,  
would, with extraordinary advantage, apply itself to the  
extraordinary circumstances of Bengal. For individuals,  
under every species of guilt, and every legal degree of  
suspicion, an appropriate place would be found in one of  
these important hospitals for the mind, and society would  
no longer be exposed to danger from any individual to  
whom probable evidence of a mischievous character at-  
tached.<sup>1</sup>

Under the existing system, the penal contrivances

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severe, would it not be necessary to extend their power still further! And  
are we all fit persons to be intrusted with discretionary power to inflict punish-  
ments which are by many considered to be worse than death?

"Persons who are intrusted with such powers ought to be appointed from  
no other consideration whatever, but that of the fitness of the man for the  
place. But I would ask, whether all our appointments have ever been so  
filled? And whether it is probable, from the nature of our service, that they  
ever will be? We may all be judges, learned and unlearned."

<sup>1</sup> The want of this important instrument of judicature is felt, though not  
distinctly understood, by some of the Company's judges. The answer to the  
interrogatories, in 1802, from the magistrates of the twenty-four pergunnahs,  
says, "A number of the convicts at this station are employed in repairing  
some of the public roads in the vicinity of Calcutta, &c. The number of  
guards requisite to superintend and watch the convicts, thus employed, pre-  
vents our keeping so many of them to work, as we could wish, and as the  
preservation of their health seems to require. The construction of a house of  
correction, in the vicinity of the jail, where all the convicts who are capable of  
work might be kept in constant labour, would remedy the evil, and appears  
to us to be a preferable mode." Fifth Report, ut supra, p 553

BOOK VI  
CHAP. VI.  
1703.

he declares, therefore, is, that under the present state of the laws and the government, the improvement, either of the circumstances, or of the morals of the people is utterly hopeless and that a fundamental change must take place in these, the primary sources of good and evil, before any change can take place in the streams they send forth. Next to the direct operation of ameliorated laws upon the intellectual and moral character of the natives, would be that diffusion of Englishmen in the society by means of colonization, from which we have already seen that so many important consequences would flow<sup>1</sup>

Beside the official documents, which I have quoted as I went on, there is information of great importance, on the state of delinquency in India, on its causes, and on its remedies, in the work of a young Indian judge, lost to the world too soon, the work formerly quoted, on the Political State of India, by Alexander F. Tytler Esq.—M.

There is, no doubt, much that is commendable in these projected reformations; but, as is the case in all closet legislation, difficulties are disregarded—the relative importance of objects is miscalculated, and the efficacy of favourite remedies indelicately overrated. That the laws should be comprehensive and precise, that tribunals should be in proportion to the wants of the people, and that justice should be administered without avoidable delay are truths which no person will dispute. But to enact codes of laws prematurely for society, which, like that of British India, is in course of constant and fundamental change, must leave very much to be done, very much to be undone. To multiply inefficient tribunals would be to multiply the chances of wrong and justice administered without form or deliberation will often turn out to be injustice. The prevalence of perjury is exaggerated as has been before shown and it may be doubted if sentences explanatory of its criminality on the back of ‘tax-gatherer’ receipt will be more efficacious in suppressing it, than the chances to the same effect which are to be found even in *Missa*, or that ticket granted as certificate of veracious testimony by court of justice would be very highly prized. That the judge should be qualified to interpret evidence by the innumerable indications which are given by popular modes of expression and deportment is, no doubt, highly desirable, and that he should be carefully disciplined in knowledge of human nature and of the principles and practice of jurisprudence is undoubted, of equal importance, but complete course of forensic education in England would delay the season of exhibiting its benefits in India, until the faculty of adaptation to climate and circumstances had passed away and those and inclination would be wanting to acquire that intimate acquaintance with the people which it is admitted is equally essential to the formation of a perfect judge. That persons thus doubly qualified will be abundant and cheap in India, now that some half dozen Indigo-planters, and sugar growers rear their produce on their own lands, would scarcely be anticipated by our author were he able to observe the effects of this universal panacea for all the defects of Anglo-Indian government. The conversion of the whole army into military police, is a project not very likely to meet the concurrence of military men and those who know how the troops in India are disposed of, will laugh outright at the notion of distributing the men with their officers all over the country according to skilful organisation, which should combine their operations in the smallest parties with their operations in body. It may be also doubted, if the government will be in a hurry to organize the whole of the population as gendarmes. And here, such an importance is attached to the admirable effects of colonisation, which it is safe prophecy to foretell, will never be realized, for colonisation never will—never can take place. With regard to the proposed mode of punishing crime, we much doubt the expedience of Panopticon Penitentiary in Bengal, although it be the invention of Mr Bentham. The conclusion of the inefficiency of the existing means of preventing or punishing built drawn from the assertion of the judges of Moonsbedabad, that dacoits had

After the voyage of Lord Cornwallis to Madras, in 1793, he did not return to Bengal, but sailed for England in the month of August. To complete the view of his administration, the financial situation in which he left the Company is all that remains to be described.

BOOK VI.  
CHAP. VI

1793.

In the year ending April 1793, the whole of the receipts of the Company in India amounted to 8,225,628*l*, and the whole of the expenses amounted to 7,007,050*l*, the difference is 1,218,578*l*, the profit, or gain, which accrued to the Company upon the transactions of that year. In the receipts were included the subsidies from Indian Princes, and collections from the ceded and conquered countries, to the amount of 1,911,492*l*, and in the expenses were included the interest of debts in India, and the money supplied to Bencoolen and the other distant settlements, amounting to 702,443*l*. The debts in India were 7,971,665*l*. The debts in England, exclusive of the capital stock, were 10,983,518*l*. To the capital stock, another million had been added in 1789, which, subscribed at 174 per cent., yielded 1,740,000*l*. The capital stock, on which was now paid a dividend of ten and a half per cent., amounted to 5,000,000*l*.<sup>1</sup> The financial results of this administration, when compared with the financial results of that of Mr Hastings,<sup>2</sup> exhibit a decrease of the net

not decreased in the district under their jurisdiction in 1803, shows how dangerous it is to draw conclusions in a hurry as the crime of dacoity has, since 1803, infinitely decreased in the division of Moorshedabad. The remarks which are made upon the relation of poverty and crime are unquestionably perfectly just and sound, but it may be doubted, if it is quite so easy as it is assumed to be, to enrich the body of the people. If the discovery be as palpable as is represented, it is marvellous that the old established governments of Europe have not found it out, and it is scarcely fair to the newly and anomalously-constituted government of India to expect that it should set the example. At the same time the novelty and peculiarity of our condition are favourable to progressive improvement, and in nothing is the text more to be reprehended than in the impression it tends to produce, that which was the present state of things in 1808, was never to receive amelioration. The view which is taken of it is an extreme exaggeration of its defects, but it is the spirit of the British Indian Government to be perpetually reforming. The reforms are not always judicious—and they are often mischievous by being precipitate—by being premature—time is not allowed to consolidate one project, before, on account of some unessential imperfections which would correct themselves, it is swept away by an equally short-lived successor. Still, however, the tendency is praiseworthy and beneficial—and many changes have been made, and many more in progress, which are much more likely than colonization to ameliorate the condition of the native population. It is only necessary not to be impatient—nor to force on exotic reforms out of season, if we would wish them to take root and live.—W

<sup>1</sup> See the accounts of the E. I. C. for 1793, presented to parliament in 1794. See also the Third and Fourth Reports of the Select Committee on India affairs, in 1810, with the accounts in the Appendixes.

<sup>2</sup> Vide supra, ii. 675

BOOK VI. surplus, but to compensate for this, the extinction of a  
 CHAP VI. small portion of debt. The financial state of the Com-  
 1723. pany as it appeared on the face of the accounts, is thus a  
 little better in one respect, but worse in another and the  
 point of deterioration more material, doubtless, than that  
 of improvement. As the government of India, was, how-  
 ever now the government of the ministry it was the  
 interest of the ministry to praise it. In this particular  
 they were, accordingly by no means wanting to them-  
 selves. The influence of the ministry in parliament has  
 been almost always sufficient to make the praises bestowed  
 by the ministry be accepted in parliament as principles of  
 belief and the influence of ministry and parliament was  
 combined, to give them an ascendancy over the belief of  
 the nation at large. Mr Dundas, no ordinary master in  
 the oblique arts of ruling the minds of men, represented  
 these financial results, as an object not only of rejoicing  
 and triumph, but even of astonishment. He endeavoured  
 to persuade, and succeeded in persuading, the parliament  
 and the nation, that India had fairly begun to be, what  
 India would continue to be, a vast source of wealth to  
 the nation, affording a surplus revenue, sufficient to enrich  
 the East India Company and contribute largely toward  
 the maintenance of the British government itself. Such  
 were the strains which year after year were sung in the  
 ears of the nation and dictated the legislative proceed-  
 ings. In fact, however the favourable symptoms, inferior  
 as they were to those exhibited in 1786, lasted for only a  
 year or two. In 1797 a permanent deficit began, and the  
 rapid accumulation of debt exceeded all former example.  
 The joy indeed, which was expressed upon the financial  
 prospects of India, wherever it was real and not pretended,  
 was founded from the beginning upon ignorance. Large  
 sums had been obtained from new-made conquests, and  
 the charge to be incurred for their government was not  
 yet ascertained. As soon as that charge had time to swell  
 to its natural, that is, its utmost limits, the disburse-  
 ments of the Indian government outran its receipts.

